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UNITED NATIONS JURIDICAL YEARBOOK 1991

UNITED NATIONS

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FOREWORD

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

Chapters I and II of the present volume—the twenty-ninth of the series—contain legislative texts and treaty provisions relating to the legal status of the United Nations and related intergovernmental organizations. With a few exceptions, the legislative texts and treaty provisions which are included in these two chapters entered into force in 1991. Decisions given in 1991 by international and national tribunals relating to the legal status of the various organizations are found in chapters VII and VIII.

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

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

Finally, the bibliography, which is prepared under the responsibility of the Office of Legal Affairs by the Dag Hammarskjöld Library, lists works and articles of a legal character published in 1991.

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

ESCAP	Economic and Social Commission for Asia and the Pacific
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILC	International Law Commission
ILO	International Labour Organisation
IMF	International Monetary Fund
IMO	International Maritime Organization
ITU	International Telecommunication Union
UNCED	United Nations Conference on Environment and Development
UNCHS	United Nations Centre for Human Settlements (Habitat)
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDRO	Office of the United Nations Disaster Relief Coordinator
UNDTCD	United Nations Department of Technical Cooperation for Development
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNIFIL	United Nations Interim Force in Lebanon
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

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

[No legislative texts concerning the legal status of the United Nations and related intergovernmental organizations to be reported for 1991.]

Chapter II

TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

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

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS.[1] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

The following States acceded to the Convention in 1991:[2]

State	*Date of receipt of instrument of accession*
Zimbabwe	13 May 1991
Estonia	21 October 1991

This brought to 126 the number of States parties to the Convention.[3]

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2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Exchange of letters constituting an agreement between the United Nations and the Government of Nepal concerning a Regional Meeting on Confidence-building Measures in the Asia-Pacific Region [to be held at Kathmandu from 24 to 26 January 1991].[4] New York, 7 and 14 January 1991

I

LETTER FROM THE UNITED NATIONS

7 January 1991

I would like to propose that the following terms apply to the Meeting:

(*a*) (i) All participants invited by the United Nations to the Meeting, other than representatives of States and officials of the United Nations, will be considered experts on mission for

the United Nations and in such capacity enjoy the privileges and immunities accorded under article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations.

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

(*b*) All participants and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from Nepal. Visas and entry permits, where required, shall be granted as speedily as possible and free of charge.

(*c*) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of injury or damage to persons or property in the Meeting or office premises provided for the Meeting, and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

. . .

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an agreement between the United Nations and the Government of Nepal for the Meeting.

(*Signed*) Yasushi AKASHI
Under-Secretary-General for Disarmament Affairs

II

LETTER FROM THE PERMANENT MISSION OF THE KINGDOM OF NEPAL

14 January 1991

With reference to your letter dated 7 January 1991 and upon instructions from my Government, I have the honour to confirm that the following terms and conditions would apply to the "Regional Meeting in Confidence-building Measures in the Asia-Pacific Region", to be held under the auspices of the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific in Kathmandu, Nepal, from January 24 to 26, 1991:

[See letter I]

(*Signed*) Jai Pratap RANA
Permanent Representative

(*b*) Exchange of letters constituting an agreement between the United Nations and the Austrian Federal Government concerning the United Nations Seminar on Confidence- and Security-building Measures.[5] New York, 19 November 1990 and 21 February 1991

I

LETTER FROM THE UNITED NATIONS

19 November 1990

I have the honour to refer to the kind offer of the Austrian Government to cooperate with the United Nations in holding a Seminar on Confidence- and Security-building Measures. The meeting is being organized by the Department for Disarmament Affairs from 25 to 27 February 1991 in Vienna. With the present letter I wish to obtain your Government's acceptance of the following arrangements:

In accordance with paragraph (1) of article I of the Agreement between the United Nations and the Republic of Austria regarding the headquarters seat of the United Nations Industrial Development Organization and other United Nations offices at the Vienna International Centre, signed on 19 January 1981,[6] the provisions of the Headquarters Agreement for UNIDO signed on 13 April 1967[7] shall apply *mutatis mutandis* to the United Nations Seminar on Confidence- and Security-building Measures.

It is agreed that the total number of participants shall not exceed 50. The Department for Disarmament Affairs will make arrangements to invite competent experts in the area of confidence- and security-building measures, in consultation with your Government, from the Asian, Latin American, African, and Western and Eastern European regions. Staff members of the United Nations Department for Disarmament Affairs will also attend.

Funding for the seminar will derive from the approximately 1 million Austrian schillings to be made available by your Government for the purposes of the Seminar, and which will be augmented, if necessary, by extra-budgetary Department funds.

I should like to propose that the following terms, previously applied by the United Nations to similar events in the past, also apply to this Seminar:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Seminar. 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 Seminar shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

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

(iii) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Seminar;

(*b*) All participants and all other persons performing functions in connection with the Seminar shall have the right of unimpeded entry into and exit from Austria. Visas and entry and exit permits, where required, shall be granted free of charge and as speedily as possible and not later than three days before the opening of the Seminar;

(*c*) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of:

(i) Injury or damage to person or property in the conference or office premises provided for the Seminar;

(ii) The transportation provided by your Government;

(iii) The employment for the Seminar of personnel provided or arranged by your Government;

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

. . .

I further propose that upon receipt of your affirmative answer in writing to the above, this exchange of letters shall constitute an agreement between the United Nations and the Government of Austria regarding the provision of host facilities by your Government for the Seminar on Confidence- and Security-building Measures organized by the United Nations in Austria, and further that the agreement shall remain in force for the duration of the Conference and for such time thereafter as is necessary for the complete execution of the provisions of this agreement.

(*Signed*) Yasushi AKASHI
Under-Secretary-General for Disarmament Affairs

II

LETTER FROM THE PERMANENT MISSION OF AUSTRIA TO THE UNITED NATIONS

21 February 1991

I have the honour to acknowledge receipt of your letter of 19 November 1990 which reads as follows:

[See letter I]

. . .

I have the honour to confirm that your letter and my answer constitute an agreement between the Austrian Federal Government and the United Nations which enters into force on the date of this reply and shall remain in force for the duration of the Seminar for the complete execution of the provisions of this agreement.

(*Signed*) Peter HOHENFELLNER
Permanent Representative

(*c*) Exchange of letters constituting an agreement between the United Nations and the Union of Soviet Socialist Republics concerning a Conference of Peace Messenger Organizations [to be held at Dagomys (Sochi), USSR, from 10 to 14 June 1991].[8] New York, 17 January and 25 February 1991

I

LETTER FROM THE UNITED NATIONS

17 January 1991

. . .

I should also like to propose that the exchange of letters constituting an Agreement between the United Nations and the Union of Soviet Socialist Republics covering general terms applicable to United Nations seminars, symposiums and workshops to be held at the USSR on 14 and 15 June 1983, together with the Memorandum of Understanding which is an integral part of that Agreement,[9] shall be applicable to the Conference.

Upon receipt of a letter expressing the Soviet Government's concurrence with the above, the present letter and the Soviet Government's reply shall constitute an agreement between the United Nations and the Government of the Union of Soviet Socialist Republics concerning the Conference of Peace Messenger Organizations to be held at Dagomys (Sochi), USSR, from 10 to 14 June 1991.

(*Signed*) Vasiliy S. SAFRONCHUK
Under-Secretary-General for Political and Security Council Affairs

II

LETTER FROM THE PERMANENT MISSION OF THE UNION OF SOVIET SOCIALIST REPUBLICS

25 February 1991

With reference to your letter of 17 January 1991, I have the honour to confirm that the Government of the Union of Soviet Socialist Republics agrees to extend the effect of the Agreement between the Government of the USSR and the United Nations of 14 and 15 June 1983 concerning general terms applicable to United Nations seminars, symposiums and workshops to be held in the USSR and of the Memorandum of Understanding annexed thereto to the holding of a Conference of Peace Messenger Organizations in the USSR (Dagomys, 10-14 June 1991).

The Permanent Mission confirms that the Soviet Peace Fund accepts responsibility for the technical organization and the technical and administrative aspects of the holding of the Conference.

The necessary steps will be taken in the USSR to ensure that the Conference is given wide publicity through the mass media in an appropriate and timely fashion.

Your letter of 17 January 1991 and this reply from the Permanent Mission shall constitute an agreement between the Government of the USSR and the United Nations concerning the holding of the above-mentioned Conference.

(*Signed*) W. LOZINSKIY
First Deputy Permanent Representative

(*d*) Agreement between the United Nations and the Government of the Republic of Korea regarding the Arrangements for the forty-seventh session of the Economic and Social Commission for Asia and the Pacific[10] [to be held at Seoul from 1 to 10 April 1991]. Signed at Bangkok on 25 March 1991

Article VIII

LIABILITY

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

(*a*) Injury to person or damage/loss of property in the conference premises;

(*b*) Injury to person or damage/loss of property caused by, or incurred in using the transport services provided by or under the control of the Government; and

(*c*) The employment for the Session of the personnel provided by the Government.

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

Article IX

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, as agreed between the United Nations and the Government of the Republic of Korea through the exchange of letters on 6 June 1978 in New York, shall be applicable in respect of the Session.

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

3. The representatives of the specialized or related agencies shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

4. Without prejudice to the preceding paragraphs of the present article, all participants in the Session, including those referred to in article VI and all those invited to the Session, shall be accorded maximum facilities and courtesies necessary for the independent exercise of their functions in connection with the Session.

5. The Government of the Republic of Korea will facilitate the entry into or exit from the Republic of Korea of all participants invited by the United Nations. Visas and entry permits, where required, will be granted as speedily as possible and free of charge.

6. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the premises shall be inviolable for the duration of the Session, including the preparatory stage and the winding-up.

7. All persons referred to in article II, above, shall have the right to take out of the Republic of Korea at the time of their departure, any unexpended portions of the funds they brought in to the Republic of Korea in connection with the Session and to reconvert any such funds at the rate of exchange in force at the date of reconversion.

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

(*e*) Exchange of letters constituting an agreement between the United Nations and the Government of India concerning the United Nations/European Space Agency Workshop on Basic Space Science for the Benefit of Developing Countries,[11] to be held at Bangalore, India, from 30 April to 3 May 1991. New York, 30 January and 24 April 1991

I

LETTER FROM THE UNITED NATIONS

30 January 1991

. . .

On behalf of the United Nations, I should be grateful to receive your Government's acceptance of the following arrangements regarding the services to be provided for the Workshop.

. . .

D. *The Convention on the Privileges and Immunities*

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

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

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

(*c*) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Workshop.

2. All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from India. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening

of the Workshop, visas shall be granted not later than two weeks before the opening of the Workshop. If the application is 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.

3. It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (i) injury to person or damage to property in conference or office premises provided for the Workshop; (ii) the transportation provided by your Government; and (iii) the employment for the Workshop of personnel provided or arranged by your Government; and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except where it is agreed by the parties that the injury or damage is attributable to gross negligence or wilful misconduct on the part of the United Nations or its personnel.

. . .

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute a memorandum of understanding between the United Nations and the Government of India in respect of this Workshop.

(*Signed*) Vasiliy S. SAFRONCHUK
Under-Secretary-General for
Political and Security Council Affairs

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF INDIA TO THE UNITED NATIONS

24 April 1991

I have the honour to acknowledge the receipt of your letter dated 30 January 1991, which reads as follows:

[See letter I]

I have further the honour to confirm, on behalf of the Government of the Republic of India, the foregoing arrangement and to agree that your letter and this letter shall be regarded as constituting a memorandum of understanding between the Government of the Republic of India and the United Nations, and will come into force on the date of this reply.

(*Signed*) C. R. GHAREKHAN
Permanent Representative

(*f*) Exchange of letters constituting an agreement between the United Nations and the Government of Canada on arrangements for the Eighth United Nations North American Regional NGO Symposium on the Question of Palestine,[12] to be held at Montreal from 28 to 30 June 1991. New York, 24 April 1991

I

LETTER FROM THE UNITED NATIONS

24 April 1991

. . .

With the present letter of understanding, I have the honour to propose to your Government that the following terms should apply to the Symposium:

(i) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, will be applicable in respect of the Symposium. The representatives of Member States invited by the United Nations to participate in the Symposium will enjoy the privileges and immunities accorded by article IV of the Convention and all other participants invited by the United Nations will 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 Symposium will enjoy the privileges and immunities provided under articles V and VII of the Convention and all other participants invited by the United Nations, including officials of specialized agencies, will be covered as experts on mission;

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

(iii) Locally employed personnel pursuant to this understanding will enjoy all facilities necessary for the independent exercise of their functions in connection with the Symposium;

(iv) All participants and all United Nations officials performing functions in connection with the Symposium will have the right of unimpeded entry into and exit from Canada. Visas and entry permits, where required, will be granted promptly upon application and free of charge;

(v) It is further understood that the Government of Canada will be responsible for dealing with any action, claim or other demand

against the United Nations arising out of injury to person or damage of property in conference or office premises provided for the Symposium. The Government will hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except where it is agreed by the parties that the claim or liability arises from the gross negligence or wilful misconduct on the part of the United Nations and its personnel;

. . .

I further propose that upon receipt of your Government's acceptance of this proposal the present letter and the letter in reply from your Government will constitute an understanding between the Government of Canada and the United Nations concerning the arrangements for the Symposium.

(*Signed*) Ronald I. SPIERS
Under-Secretary-General for
Political and General Assembly Affairs
and Secretariat Services

II

LETTER FROM THE PERMANENT MISSION OF CANADA TO THE UNITED NATIONS

24 April 1991

On behalf of His Excellency Mr. L. Yves Fortier, Permanent Representative of Canada to the United Nations, I have the honour to acknowledge receipt of your letter dated 24 April 1991 in which you proposed arrangements relating to the holding in Montreal, from 28 to 30 June, of the Eighth United Nations North American Regional NGO Symposium on the Question of Palestine.

I wish hereby to inform you of the concurrence of the Government of Canada with the proposed arrangements contained in your letter and to confirm that your letter and the present letter in reply will constitute an understanding between the Government of Canada and the United Nations concerning the arrangements for the Symposium.

(*Signed*) Philippe KIRSCH, Q.C.
Chargé d'Affaires a.i.

(*g*) Exchange of letters constituting an agreement between the United Nations and the Government of Cameroon concerning arrangements for the United Nations Workshop on Conflict Resolution, Crisis Prevention and Management and Confidence-building,[13] to be held at Yaoundé from 17 to 21 June 1991. New York, 8 and 25 April 1991

I

LETTER FROM THE UNITED NATIONS

8 April 1991

. . .

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

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Workshop. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention;

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

(iii) Personnel provided by the Government of the Republic of Cameroon pursuant to this agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Workshop.

(*b*) All participants and all other persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from the Republic of Cameroon. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible;

(*c*) It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations and its personnel arising out of: (i) injury to person or damage to property in the Workshop or office premises provided for the Workshop; (ii) the transportation provided by your Government; and (iii) the employment for the Workshop of personnel provided or arranged by your Gov-

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

. . .

Upon receipt of a letter expressing your Government's concurrence with the above, the present letter and your Government's reply shall constitute an agreement between the United Nations and the Government of the Republic of Cameroon concerning the holding of the Workshop.

(*Signed*) Yasushi AKASHI
Under-Secretary-General for Disarmament Affairs

II

LETTER FROM THE PERMANENT MISSION OF CAMEROON TO THE UNITED NATIONS

25 April 1991

The Permanent Mission of the Republic of Cameroon to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to inform him, and through him the Department for Disarmament Affairs, that the terms of the agreement proposed in his note dated 8 April 1991 give no grounds for objection by the Cameroonian authorities, which welcome them.

The Permanent Mission thanks the Secretary-General for the constant efforts he has made to ensure the smooth running of the seminar due to be held at Yaoundé from 17 to 21 June 1991 . . .

(*h*) Agreement between the United Nations and the Government of Denmark regarding arrangements for the seventeenth session of the World Food Council[14] [to be held at Helsingor from 5 to 8 June 1991]. Signed at Copenhagen on 10 and 16 May 1991

Article XI

PRIVILEGES AND IMMUNITIES

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

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

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

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

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

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

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

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

session at the United Nations official rate of exchange prevailing when the funds were brought in.

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

(*i*) Exchange of letters constituting an agreement between the United Nations and the Government of Iraq on the status, privileges and immunities of the Special Commission established by the Secretary-General pursuant to paragraph 9 (*b*) (i) of Security Council resolution 687 (1991).[15] New York, 6 May 1991, and Baghdad, 17 May 1991

I

LETTER FROM THE UNITED NATIONS

6 May 1991

I have the honour to refer to the letter dated 19 April 1991 from the President of the Security Council (S/22509) in which he informed me of the concurrence of the members of the Security Council with my proposals, made pursuant to paragraph 9 (*b*) (i) of Security Council resolution 687 (1991), on the forming of a Special Commission to carry out the tasks enumerated in paragraphs 9 (*b*) (i)-(iii), 10 and 13 of the above-mentioned resolution. These proposals are contained in my report to the Security Council dated 18 April 1991 (S/22508).

In order to facilitate the fulfilment of the purposes of the Special Commission, I propose that your Government, in implementation of its obligations under Article 105 of the Charter of the United Nations, extend to the Special Commission, its property, funds and assets the provisions of the Convention on the Privileges and Immunities of the United Nations (the Convention), to which Iraq acceded on 15 September 1949. In view of the importance of the functions which the Special Commission shall perform in Iraq, I propose in particular that your Government extend to:

—The Executive Chairman, the Deputy Executive Chairman and other members of the Special Commission whose names shall be communicated to the Government, the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law;

—The officials of the United Nations, any of the specialized agencies of the United Nations or of the International Atomic Energy Agency performing functions in connection with Security Council resolution 687 (1991), the privileges and immunities applicable to them under articles V and VII of the Convention or articles VI and VIII of the Convention on the Privileges and Immunities of the

Specialized Agencies,[16] to which Iraq acceded on 9 July 1954, or articles VI and IX of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency[17] (the Agreement), which Iraq accepted on 23 November 1960;

—The technical experts and other specialists whose names shall be communicated to the Government, the privileges and immunities accorded to experts performing missions for the United Nations, its specialized agencies or for the International Atomic Energy Agency under article VI of the Convention, the relevant annexes to the Convention on the Privileges and Immunities of the Specialized Agencies and article VII of the Agreement, respectively.

The privileges and immunities necessary for the fulfilment of the functions of the Special Commission shall also include:

(i) Unrestricted freedom of entry and exit without delay or hindrance of its personnel, property, supplies, equipment, spare parts and other items as well as means of transport, including expeditious issuance of entry and exit visas;

(ii) Unrestricted freedom of movement without advance notice within Iraq of the personnel of the Special Commission and its equipment and means of transport;

(iii) The right to unimpeded access to any site or facility for the purpose of the on-site inspection pursuant to paragraph 9 of resolution 687 (1991), whether such site or facility be above or below ground. The Executive Chairman of the Special Commission or the Director-General of the International Atomic Energy Agency shall make arrangements to inform Iraq regarding the commencement of an inspection of a location declared by Iraq pursuant to paragraphs 9 or 12 of Security Council resolution 687 (1991) or designated by the Special Commnission, identify the site being inspected and provide Iraq with the name of the head of the inspection team (the Chief Inspector) and an estimate of the number of the Special Commission members that will take part in the inspection. The Chief Inspector shall be the official point of contact between Iraq and the Special Commission and/or the International Atomic Energy Agency during the course of an inspection. Upon receipt of the name of the Chief Inspector for an inspection, Iraq shall immediately inform the Executive Chairman of the Special Commission, or the Director-General of the International Atomic Energy Agency, as the case may be, of the name of the individual who will be the Iraqi Inspection Representative for the inspection. Any number of sites, facilities, or locations may be subject to inspection simultaneously;

(iv) The right to request, receive, examine and copy any record, data or information or examine, retain, move or photograph, including videotape, any item relevant to the Special Commission's activities and to conduct interviews;

(v) The right to designate any site whatsoever for observation, inspection or other monitoring activity and for storage, destruction or rendering harmless items described in paragraphs 8, 9 or 12 of Security Council resolution 687 (1991);

(vi) The right to install equipment or construct facilities for observation, inspection, testing or monitoring activity and for storage, destruction or rendering harmless items described in paragraphs 8, 9 or 12 of Security Council resolution 687 (1991);

(vii) The right to take photographs, whether from the ground or from the air, relevant to the Special Commission's activities;

(viii) The right to take and analyse samples of any kind as well as to remove and export samples for off-site analysis;

(ix) The right to fly the United Nations flag on United Nations premises and its vehicles;

(x) Acceptance of United Nations registration of means of transport on land, sea and in the air and United Nations licensing of the operators thereof;

(xi) The right to unrestricted communication by radio, satellite or other forms of communication and to connect with the United Nations radio and satellite network, as well as by telephone, telegraph or other means;

(xii) The right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the Special Commission. The Government of Iraq shall be informed of the nature of such arrangements, and shall not interfere with or apply censorship to the mail of the Special Commission or its members.

It is understood that the Government of Iraq shall provide at no cost to the United Nations, in agreement with the Executive Chairman of the Special Commission, all such premises as may be necessary for the accommodation and fulfilment of the functions of the Special Commission. All such premises shall be inviolable and subject to the exclusive control and authority of the Executive Chairman of the Special Commission.

Without prejudice to the use by the Special Commission of its own means of transport and communication, it is understood that your Government shall, where necessary and upon the request of the Special Commission, provide, at its own expense, the means of transport and communication for official use of the Special Commission.

Without prejudice to the use by the Special Commission of its own security, it is expected that the Government of Iraq shall ensure the security and safety of the Special Commission and its personnel and shall further provide the Special Commission, where necessary and upon request of the Special Commission, with maps and other information which may be useful in facilitating its tasks and movements. Upon the request of the Executive Chairman, escort and/or support personnel shall be provided to protect and assist the Special Commission and its personnel

during the exercise of the functions of the special Commission when in their opinion such personnel is necessary.

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

(*Signed*) Javier PÉREZ DE CUÉLLAR
Secretary-General

II

LETTER FROM THE MINISTRY OF FOREIGN AFFAIRS OF IRAQ

17 May 1991

With reference to your letter dated 6 May 1991 addressed to us, which formulates a proposal for an exchange of letters constituting an agreement between the United Nations and the Iraqi Government concerning the status, privileges and immunities of the Special Commission established in accordance with paragraph 9 of Security Council resolution 687 (1991), I have the honour to notify you that the Iraqi Government concurs with the provisions set forth in your proposal.

(*Signed*) Ahmed HUSSEIN
Minister for Foreign Affairs

(*j*) Exchange of letters constituting an agreement between the United Nations and the Austrian Federal Government concerning the thirty-fourth session of the Committee on the Peaceful Uses of Outer Space,[18] to be held at Graz, Austria, from 27 May to 7 June 1991. New York, 3 April and 23 May 1991

I

LETTER FROM THE UNITED NATIONS

3 April 1991

. . .

Furthermore, I wish to propose that the following terms, previously applied by the United Nations to similar events in the past, shall also apply to the meeting of the Committee on the Peaceful Uses of Outer Space:

(*a*) In accordance with paragraph (1) of article I of the Agreement between the United Nations and the Republic of Austria regarding the headquarters seat of the United Nations Industrial Development Organization and other United Nations offices at the Vienna International Centre, signed on 19 January 1981,[19] the provisions of the Headquarters

Agreement for UNIDO, signed on 13 April 1967,[20] shall apply *mutatis mutandis* to the thirty-fourth session of the Commitee on the Peaceful Uses of Outer Space. The Convention on the Privileges and Immunities of the United Nations shall also be applicable in respect to the meeting of the Committee;

(*b*) (i) The representatives of States members of the Committee on the Peaceful Uses of Outer Space and the observers of States not members of the Committee invited by the United Nations shall enjoy the privileges and immunities provided under section 23, article XI, of the Headquarters Agreement for UNIDO. Officials of the United Nations participating in or performing functions in connection with the meeting of the Committee shall enjoy the privileges and immunities provided under articles V and VII of the Convention on the Privileges and Immunities of the United Nations. Officials of the specialized agencies participating in the meeting of the Committee shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies. The observers of interested intergovernmental and non-governmental organizations 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 of the Committee;

(ii) Local personnel provided by the Government of Austria, with the exception of those who are assigned to hourly rates, 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 of the Committee. Such immunity shall, however, not apply in case of an accident caused by vehicle, vessel or aircraft;

(*c*) All participants and all persons performing functions in connection with the meeting of the Committee shall have the right of unimpeded entry into and exit from Austria. Visas and entry permits, where required, shall be granted free of charge and as promptly as possible;

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

(i) Injury to persons or damage to or loss of property in the premises that are provided by or are under the control of the Government of Austria;

(ii) The transportation provided by your Government;

(iii) The employment for the meeting of the Committee of local personnel provided by the Government of Austria; and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand;

. . .

I further propose that upon receipt of your affirmative answer, this exchange of letters shall constitute an agreement between the United Nations and the Austrian Federal Government which shall enter into force on date of this reply and shall remain in force for the duration of the meeting and such time thereafter as is necessary for the complete execution of the provisions of this agreement.

(*Signed*) Vasiliy S. SAFRONCHUK
Under-Secretary-General
Department of Political and
Security Council Affairs

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF AUSTRIA TO THE UNITED NATIONS

23 May 1991

I have the honour to acknowledge receipt of your letter of 3 April 1990, which reads as follows:

[See letter I]

I have the honour to confirm that your letter and my answer constitute an agreement between the Austrian Federal Government and the United Nations which enters into force on the date of this reply and shall remain in force for the duration of the meeting and for such time thereafter as is necessary for the complete execution of the provisions of this agreement.

(*Signed*) Peter HOHENFELLNER

(*k*) Exchange of letters constituting an agreement between the United Nations and the Government of Spain on the Third United Nations/FAO/European Space Agency Workshop on Microwave Remote Sensing Technology, organized with the cooperation of the Government of Spain,[21] to be held at Maspalomas, Canary Islands, Spain, from 10 to 14 June 1991. New York, 21 May and 7 June 1991

I

LETTER FROM THE UNITED NATIONS

21 May 1991

...

On behalf of the United Nations, I propose the following arrangements regarding the services to be provided by Spain and the United Nations for the Workshop.

...

D. *The Convention on the Privileges and Immunities*

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

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which Spain is a party, shall be applicable in respect of the Workshop. Articles V, VI and VII of the Convention shall be applicable as appropriate to the participants in the Workshop.

2. Without prejudice to the provisions of the Convention referred to in paragraph 1 above, all persons participating in this Workshop shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Workshop.

3. All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Spain. In the cases where visas and entry permits are preceptive, these will be granted free of charge and as promptly as possible.

4. Meeting rooms, offices, facilities and vehicles made available for the Workshop shall be considered premises of the United Nations for the duration of the Workshop, within the meaning of section 3, article II, of the Convention of 13 February 1946.

5. The authorities will be informed in a timely fashion of the conduct of the Workshop for the adequate provision of security of the same.

6. It is understood that the cost of insurance to be purchased, as referred to in section A, paragraph 4, above, is not to exceed US$3,000 of reasonable insurance coverage against liability incurred by the United Nations with respect to the following risks:

(*a*) Injury to person or damage or loss of property (of the United Nations or otherwise) in the meeting areas of the Workshop;

. . .

For the timely necessary actions, I should be grateful if you would confirm your concurrence with the terms of this letter.

(*Signed*) Vasiliy S. SAFRONCHUK
Under-Secretary-General for Political and Security Council Affairs

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF SPAIN TO THE UNITED NATIONS

7 June 1991

I have the honour to acknowledge receipt of your note of 21 May 1991 concerning the holding at Maspalomas, Canary Islands, from 10 to 14 June 1991 of the Third Workshop on Microwave Remote Sensing Technology, organized jointly by the United Nations, the Food and Agriculture Organ-

ization of the United Nations and the European Space Agency in cooperation with the Government of Spain.

In response to the said note, I am pleased to inform you of my Government's agreement with the arrangements proposed therein for the holding of the aforementioned Workshop.

(*Signed*) Juan Antonio YÁÑEZ-BARNUEVO

(*l*) Exchange of letters constituting an agreement between the United Nations and the Government of Iraq concerning the status, privileges and immunities of the United Nations Iraq-Kuwait Observation Mission.[22] New York, 15 April 1992, and Baghdad, 20 June 1992

I

LETTER FROM THE UNITED NATIONS

15 April 1992

I have the honour to refer to paragraph 5 of resolution 687 (1991) of 3 April 1991, by which the United Nations Security Council established a demilitarized zone along the boundary between Iraq and Kuwait and decided to set up, under its authority, a United Nations observer unit called the "United Nations Iraq-Kuwait Observation Mission" (hereinafter referred to as "UNIKOM") with the terms of reference as described in the report of the Secretary-General to the Security Council (S/22454 and Add.1-3), which was approved by the Security Council in its resolution 689 (1991) of 9 April and accepted by your Government.

In order to facilitate the fulfilment of UNIKOM's purposes without delay and pending the conclusion of a full-scale agreement on the status of UNIKOM and its personnel, I propose that your Government, in implementation of its obligations under Article 105 of the Charter of the United Nations, extend to UNIKOM, as an organ of the United Nations, its property, funds and assets and to its personnel the provisions of the Convention on the Privileges and Immunities of the United Nations (the Convention), to which Iraq acceded on 15 September 1949.

In view of the importance of the functions which UNIKOM will perform, I understand that:

The Chief Military Observer and high-ranking members of UNIKOM whose names shall be communicated to the Government will enjoy the privileges and immunities, exemptions and facilities which are granted to diplomatic envoys in accordance with international law;

Other officials of the United Nations Secretariat assigned to serve with UNIKOM shall enjoy the privileges and immunities to which they are entitled under articles V and VII of the Convention;

Other persons assigned to serve with UNIKOM, including the military observers, shall enjoy the privileges and immunities accorded to

experts performing missions for the United Nations under article VI of the Convention.

The privileges and immunities necessary for the fulfilment of the functions of UNKOM also include:

(i) Unrestricted freedom of entry and exit without delay or hindrance of its personnel, property, supplies, equipment, spare parts and means of transport, including exemption from passport and visa regulations; notwithstanding the freedom of movement granted to UNIKOM and its personnel, large movements shall be coordinated with the Government, it being understood that the Government shall ensure that all facilities for such large movements shall be granted as speedily as possible;

(ii) Unrestricted freedom of movement on land, sea and air, across the Iraq-Kuwait border and throughout the demilitarized zone, of UNIKOM personnel, property, supplies, equipment, spare parts and means of transport;

(iii) The right to fly the United Nations flag on premises, observation posts, vehicles and aircraft;

(iv) Acceptance of United Nations registration of means of transport on land, sea and in the air and United Nations licensing of the operators thereof;

(v) The right to unrestricted communication by radio, satellite or any other forms of communication including coded messages within the area of operations and to connect with the United Nations radio and satellite network, as well as by telephone, telegraph or any other means;

(vi) The right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNIKOM. The Government of Iraq shall be informed of the nature of such arrangements, and shall not interfere with or apply censorship to the mail of UNIKOM or its members.

It is understood that the Government of Iraq shall provide at no cost to the United Nations, by mutual agreement, all such land and premises as may be necessay for the accommodation and fulfilment of the functions of UNIKOM. All such land and premises shall be inviolable and subject to the exclusive control and authority of the United Nations.

It is also expected that the Government of Iraq shall provide UNIKOM, where necessary and upon request of the Chief Military Observer, with maps and other information including locations of minefields and other dangers and impediments, which might be useful in facilitating its tasks and movements subject to their availability to the Government. Upon the request of the Chief Military Observer, armed escorts shall be provided to protect UNIKOM personnel during the exercise of their functions in the demilitarized zone (DMZ) when in the opinion of the Chief Military Observer such escorts are necessary, in special situations.

I propose that this letter and the written confirmation of your acceptance of its provisions constitute an agreement between the United Nations and Iraq, to take effect from 15 April 1991.

(*Signed*) Boutros BOUTROS-GHALI
Secretary-General

II

LETTER FROM THE MINISTRY OF FOREIGN AFFAIRS OF IRAQ

20 June 1992

I have the honour to acknowledge receipt of your letter of 15 April 1992 in which you propose that, in accordance with Article 105 of the Charter of the United Nations, my country should extend to the United Nations observation mission in the demilitarized zone, set up pursuant to the relevant paragraph of resolution 687 (1991), the status and the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946.

My Government will facilitate the tasks with which the United Nations mission has been charged, and I am therefore pleased to inform you that my Government agrees to extend to the United Nations Iraq-Kuwait Observation Mission (UNIKOM), in accordance with the terms of your above-mentioned letter, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations, which was ratified by Iraq in its law No. 14 of 1949.

(*Signed*) Ahmed HUSSEIN
Minister for Foreign Affairs

(*m*) Agreement between the United Nations and the Government of the Islamic Republic of Iran regarding Arrangements for the Meeting of Ministers of Industry and Technology of the United Nations Economic and Social Commission for Asia and the Pacific[23] [to be held at Tehran from 24 February to 1 March 1992]. Signed at Bangkok on 27 June 1991

Article X

1. 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 in the premises referred to in article III that are provided by or are under the control of the Government;

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

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

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

Article XI

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which the Government of the Islamic Republic of Iran is a party, shall be applicable in respect of the Conference. In particular, the representatives of members and associate members of ESCAP and States Members of the United Nations referred to in article II, paragraph 1 (*a*) and (*b*), above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations performing functions in connection with the Conference referred to in article II, paragraphs 1 (*h*) and 2, above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention and any experts on mission for the United Nations in connection with the Conference shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The representatives or observers referred to in article II, paragraph 1 (*c*), (*e*), (*f*) and (*g*), above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Conference.

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

4. The representatives of the specialized or related agencies, referred to in article II, paragraph 1 (*d*), above, shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

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

6. All persons referred to in article II shall have the right of entry into and exit from the Islamic Republic of Iran, and no impediment shall be imposed on their transit to and from the conference area. They shall be

granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference, provided the application for the visa is made at least three weeks before the opening of the Conference; if the application is made later, the visa shall be granted not later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Conference are delivered on arrival to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Conference.

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

8. All persons referred to in article II, above, shall have the right to take out of the Islamic Republic of Iran at the time of their departure, without any restriction, any unexpended portions of the funds they brought into the Islamic Republic of Iran in connection with the Conference and to reconvert any such funds at the rate at which they had originally been converted.

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

(*n*) Exchange of letters constituting an agreement between the United Nations and the Government of Mexico regarding the Regional Disarmament Workshop for Latin America and the Caribbean with Special Emphasis on Chemical Weapons,[24] to be held at Mexico City from 1 to 5 July 1991. New York, 28 June 1991

I

LETTER FROM THE UNITED NATIONS

28 June 1991

. . .

I should like to propose that the following terms, previously applied by the United Nations to similar events in the past, also apply to this Workshop:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations shall be applicable in respect of the Workshop. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under article V and VII of the Convention;

(*ii*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons who are not Mexican nationals performing functions in connection with the Workshop shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Workshop;

(iii) Personnel who are not Mexican nationals, employed pursuant to this Agreement, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Workshop;

(*b*) All participants and persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Mexico. Visas shall be granted free of charge and as speedily as possible. Visas shall be granted not later than three days from the receipt of the application;

(*c*) The participants and the speakers in the Workshop, officials of the United Nations responsible for the organization of the Workshop and experts on mission for the United Nations in connection with the Workshop shall have the right to take out of Mexico at the time of their departure, without any restrictions, any unexpected portions of the funds they brought into Mexico in connection with the Workshop;

(*d*) The Government shall allow the temporary importation, tax- and duty-free, of all equipment and shall waive import duties and taxes on supplies necessary for the Workshop. It shall issue without delay any necessary import and export permits for these purposes;

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

(i) Injury to person or damage to or loss of property in the conference premises;

(ii) Injury to person or damage to or loss of property caused by, or incurred in using the transport services;

(iii) The employment for the Workshop of personnel provided by the Government;

(*f*) The Government shall indemnify and hold harmless the United Nations and its personnel in respect of any such action, claim or other demand, except if it is agreed by the Parties hereto that such injury, loss or damage was caused by gross negligence or wilful misconduct of United Nations personnel;

(*g*) Any dispute concerning the interpretation or implementation of this agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, shall be settled through negotiation and consultation.

I further propose that, upon receipt of your affirmative answer in writing to the above, this exchange of letters shall constitute an agreement between the United Nations and the Government of Mexico regarding the Regional Disarmament Workshop for Latin America and the Caribbean with Special Emphasis on Chemical Weapons, organized by the United Nations in Mexico, and further that the agreement shall remain in force for the duration of the Workshop and for such time thereafter as is necessary for the complete execution of the provisions of this agreement.

(*Signed*) Yasushi AKASHI
Under-Secretary-General for Disarmament Affairs

II

LETTER FROM THE PERMANENT MISSION OF MEXICO TO THE UNITED NATIONS

28 June 1991

With reference to your note dated 28 June 1991, I have the honour to inform you that the Government of Mexico accepts the terms of your proposal concerning the privileges and immunities to be granted to participants in the Regional Disarmament Workshop for Latin America and the Caribbean with Special Emphasis on Chemical Weapons, to be held at Mexico City from 1 to 5 July 1991 under the auspices of the Department for Disarmament Affairs.

(*Signed*) Antonio VILLEGAS
Permanent Representative

(*o*) Exchange of letters constituting an agreement between the United Nations and the Government of El Salvador concerning the United Nations Observer Mission in El Salvador for the purpose of verifying the observance of human rights in El Salvador in accordance with the Agreement on Human Rights signed at San José on 26 July 1990 between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional.[25] New York, 16 July and 9 August 1991, and San Salvador, 23 July 1991

I

LETTER FROM THE UNITED NATIONS[26]

16 July 1991

I have the honour to refer to United Nations Security Council resolution 693 (1991) of 20 May 1991, in which the Council decided to establish, under its authority, a United Nations Observer Mission in El Salvador (hereinafter referred to as "ONUSAL" or "the Mission"), for the purpose of verifying the observance of human rights in El Salvador, in accordance with the Agreement on Human Rights signed at San José on 26 July 1990 between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional[27] and as stated in the report of the Secretary-General to the Security Council (S/22494 and Corr.1 and Add.1), which was approved by the Council in the same resolution. The Security Council instructed the Secretary-General to take the necessary measures to implement its decision to establish the Mission in accordance with resolution 693 (1991) and the aforementioned report. At such time as it shall be established, the Mission will assume the functions of the existing Preparatory Office of the United Nations Mission in El Salvador.

To further the purposes of the Mission, I propose that your Government, in fulfilment of its obligations under Article 105 of the Charter of the United Nations, accord to the Mission in its capacity as a United Nations body, to its property, funds and assets and to the members of its staff, those privileges and immunities set out in the Convention on the Privileges and Immunities of the United Nations, to which El Salvador acceded on 9 July 1947. In view of the special importance of the duties to be performed by the Mission in El Salvador, I propose that your Government accord:

—To the Special Representative appointed by the Secretary-General and to the Directors and other senior members of the Mission, those privileges and immunities, exemptions and facilities enjoyed by diplomatic envoys in accordance with international law;

—To the staff members of the United Nations Secretariat assigned to the Mission, those privileges and immunities to which they are entitled under articles V and VII of the Convention;

—To other persons assigned to the Mission, and to military and civilian support staff, those privileges and immunities enjoyed by

experts on missions for the United Nations, under article VI of the Convention.

Accordingly, the names of the persons comprising these three categories shall be furnished to your Government.

Furthermore, and with a view to fulfilling the purposes of the Agreement on Human Rights concluded in San José on 26 July 1990, and any other agreements that may be concluded during the negotiations between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional conducted under the good offices of the Secretary-General of the United Nations, the Mission shall, for the fulfilment of its purposes, possess the following powers:

(i) The freedom to bring in or take out, without delay or interference, goods, supplies, equipment and spare parts;

(ii) Unrestricted freedom of movement throughout the country of staff, equipment and means of transport;

(iii) The right to interview, freely or in private, any individual in any region of El Salvador, and to receive communications from any individual, group of individuals or body in El Salvador, as well as the right to hold meetings;

(iv) The right to visit or investigate freely and without prior notice any place or establishment, including, *inter alia*, detention centres, prisons, State security bodies and military units;

(v) The right to collect such information as it considers relevant by any legal means it deems appropriate;

(vi) The right to use the media for the dissemination of information about the work of the Mission;

(vii) The right to make recommendations to the parties to the San José Agreement on the basis of any conclusions it has drawn from the cases and situations examined;

(viii) The right to fly the United Nations flag, and to use its emblems and symbols, on the premises of the United Nations, including its regional and subregional offices, and its vehicles, aircraft and ships;

(ix) The right to use United Nations licence plates and markings on vehicles, aircraft and ships, and to use driver's licences issued by the United Nations;

(x) The right to communicate, without restriction, by radio, satellite or any other means, with United Nations Headquarters, as well as with the regional and subregional offices, to establish links with the United Nations radio and satellite network, and to communicate by telephone, telegraph or any other means;

(xi) The right to make arrangements, through its own offices, for the handling and dispatch of private correspondence received or sent by the staff of the Mission. The Government of El Salvador will be informed of the nature of those arrangements,

and will not intercept or censor the correspondence of the Mission or of its staff.

. . .

If the provisions set forth herewith meet with your approval, I propose that this letter and your reply shall constitute an agreement between the United Nations and the Republic of El Salvador, which shall enter into force on the date of arrival of the first component of ONUSAL in El Salvador, of which I will inform you.

(*Signed*) Javier PÉREZ DE CUÉLLAR
Secretary-General

II

LETTER FROM THE MINISTRY OF FOREIGN AFFAIRS OF EL SALVADOR[26]

23 July 1991

I have the honour to refer to your note of 16 July 1991, in which you propose the text of the agreement to be entered into by the United Nations and the Government of El Salvador in connection with the constitution of the United Nations Observer Mission in El Salvador, also referred to as "ONUSAL" or "the Mission", whose task it will be to verify observance of human rights in accordance with the Agreement on Human Rights signed at San José, Costa Rica, on 26 July 1990, between my Government and the Frente Farabundo Martí para la Liberación Nacional. The text of your letter reads as follows:

[See letter I]

In this regard, I wish to inform you that my Government agrees with the aforementioned text, provided that a paragraph is added at the end reading as follows:

> "It is understood that, in the performance of their duties under the San José Agreement, the ONUSAL officials will carry out their activities with due respect for the Constitution, the laws, the State institutions and officials of the Republic of El Salvador."

If you agree with this amendment, I propose that this note and another note from you accepting the proposed amendment shall constitute an agreement between the United Nations and the Republic of El Salvador, which will enter into force on the date of arrival in El Salvador of the first ONUSAL component.

(*Signed*) José Manuel PACAS CASTRO
Minister for Foreign Affairs

III

LETTER FROM THE UNITED NATIONS

9 August 1991

I have the honour to refer to your letter of 23 July 1991 replying to my letter of 16 July 1991, in which you confirm that your Government accepts the text proposed in my previous letter regarding the status of ONUSAL and its staff, and in which you inform me that your Government wishes to add the following paragraph:

> "It is understood that, in the performance of their duties under the San José Agreement, the ONUSAL officials will carry out their activities with due respect for the Constitution, the laws, the State institutions and officials of the Republic of El Salvador."

In this regard, I wish to confirm that the text you propose seems acceptable. Consequently, this letter, as well as the letters exchanged between us, dated 16 and 23 July 1991 respectively, shall constitute an agreement between the United Nations and El Salvador regarding the status of ONUSAL and the privileges and immunities of its staff. This agreement shall enter into force on the date of arrival in El Salvador of the first component of ONUSAL.

(*Signed*) Javier PÉREZ DE CUÉLLAR

(*p*) Exchange of letters constituting an agreement between the United Nations, the Government of Denmark and the Greenland Home Rule Government concerning a meeting of experts to review the experience of countries in the operation of schemes of internal self-government for indigenous populations,[28] to be held at Nuuk, Greenland, from 24 to 28 September 1991. Geneva, 2 July and 9 August 1991

I

LETTER FROM THE UNITED NATIONS

2 July 1991

. . .

Please find below the text of the arrangements between the United Nations and the Government of Denmark as well as the Greenland Home Rule Government concerning that meeting.

. . .

5. The Greenland Home Rule Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (i) injury to person or damage to property in conference or office premises provided for the meeting; (ii) the transportation provided by the Government; and (iii) the employment for the meeting of personnel

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

6. The Government of Denmark agrees that the Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which Denmark is a party, shall be applicable to the meeting, in particular:

(*a*) The participants invited in accordance with paragraphs 1 and 2 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 on the Privileges and Immunities of the United Nations, 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 their functions in connection with the meeting;

(*c*) Personnel provided by the Home Rule Government of Greenland 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;

. . .

Upon receipt of letters expressing the concurrence of the Government of Denmark and of the Greenland Home Rule Government with the above, the present letter and the replies thereto shall constitute an agreement between the United Nations, the Government of Denmark and the Greenland Home Rule Government.

(*Signed*) Jan MARTENSON
Director-General
United Nations Office at Geneva

II

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

9 August 1991

I have the honour to acknowledge receipt of your letter of 2 July 1991 in which you propose a text of arrangements between the United Nations, the Government of Denmark and the Greenland Home Rule Government concerning a meeting of experts to review the experience of countries in the operation of schemes of internal self-government for indigenous populations, in Nuuk, from 24 to 28 September 1991.

It is the understanding of the Government of Denmark and the Greenland Home Rule Government that the Greenland Home Rule Government is obliged to cover those extra costs which occur by having the meeting in Nuuk instead of Geneva. Therefore, it is expected that the United Nations for the interpreters in question will make use of its own staff and also pay their regular salary (except for the two interpreters for Greenlandic) and that the Greenland Home Rule Government cover the extra costs such as travel and per diem.

In reply to your letter, I have the honour to state that the Government of Denmark as well as the Greenland Home Rule Government, with the above-mentioned understanding, accept your proposal and agree that your letter and the present reply shall constitute an agreement between the United Nations, the Government of Denmark and the Greenland Home Rule Government.

(*Signed*) Jakob Esper LARSEN
Permanent Representative to the
United Nations Office at Geneva

(*q*) Agreement between the Secretary-General of the United Nations and Namibia concerning the United Nations Information Centre in Namibia. Signed at New York on 21 August 1991[29]

Article III

STATUS OF THE CENTRE

1. The premises of the Centre and the residence of its Director shall be inviolable.

2. The Government shall exercise due diligence to ensure the security and protection of the premises of the Centre and its staff.

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

Article V

OFFICIALS OF THE CENTRE

1. Officials of the Centre shall:

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

(*b*) Be immune from seizure of their personal and official baggage;

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

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

(*e*) Be immune from national service obligations;

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

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

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

(*i*) Have the right to import free of duty their furniture, personal effects and all household appliances, including one automobile, intended for personal use free of duty when they come to reside in Namibia, which privilege shall be valid for a period of one year from the date of arrival in Namibia. It is further understood that customs and excise duties will become payable in the event of the sale or disposal of such goods within three years after their importation to a person not entitled to this exemption.

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

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

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

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

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

5. The privileges and immunities under this Agreement are granted solely for the purpose of carrying out effectively the aims and purposes of

the United Nations. The Secretary-General may waive the immunity of any staff member whenever in his opinion such immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

(*r*) Exchange of letters constituting an agreement between the United Nations and the Government of Morocco concerning the United Nations Mission for the Referendum in Western Sahara.[30] New York, 13 December 1991, and Rabat, 15 January 1992

I

LETTER FROM THE UNITED NATIONS[31]

13 December 1991

I have the honour to refer to Security Council resolution 690 (1991), by which the Council decided to establish, under its authority, a United Nations Mission for the Referendum in Western Sahara (hereinafter referred to as "MINURSO"), whose mandate is set forth in the report of the Secretary-General (S/22464 and Corr.1), which was approved by the Council on 29 April 1991.

In order to enable MINURSO to fulfil its mandate without delay, and pending the conclusion of a comprehensive and detailed agreement on the status of MINURSO and its personnel, I propose, in pursuance of Article 105 of the Charter of the United Nations, that your Government should accord to MINURSO, as a body of the United Nations, as well as to its property, funds, assets and personnel, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations, to which Morocco acceded on 18 March 1957.

Accordingly, I propose that your Government should grant:

—The privileges and immunities, exceptions and facilities enjoyed by diplomatic envoys in accordance with international law to the Special Representative, Deputy Special Representative and other high-ranking officials of MINURSO;

—The privileges and immunities set forth in articles V and VII of the Convention to officials of the United Nations Secretariat assigned to MINURSO;

—The privileges and immunities accorded to experts on missions for the United Nations under article VI of the Convention to officials of MINURSO, including the military observers and civilian support staff, whose names will be communicated to the Government for that purpose.

The privileges and immunities required by MINURSO for the exercise of its functions shall also include:

(i) The free entry and exit without restrictions, delays or obstacles of its personnel, property, furniture, equipment, spare parts and

vehicles, including the prompt issuance of entry and exit visas on the understanding that only the Special Representative and MINURSO officials in possession of appropriate United Nations identification who receive instructions to that effect from the Special Representative are entitled to enter and stay in the mission area and go out again;

(ii) The free movement without restrictions of its property, furniture, equipment, spare parts and vehicles, by land, air and sea, bearing in mind the provisions of (i) above;

(iii) The right to display the United Nations flag in the premises and observation posts used in connection with its duties in the mission area, as well as on its vehicles and aircraft;

(iv) Recognition of vehicles, aircraft and vessels registered by the United Nations as well as drivers' and pilots' licences it has issued;

(v) The unrestricted right to communicate by radio, satellite or any other type of communication, including coded messages within the area of operations, and to link up with the United Nations satellite and radio network, as well as by telephone, telegraph or any other means. MINURSO shall enjoy the communication facilities specified in article III of the Convention in the exercise of the functions laid down by the Security Council in its resolution 690 (1991);

(vi) The right to make the necessary arrangements for its own system of sorting and distributing personal correspondence addressed to or sent by MINURSO officials. The Government of Morocco has been notified of the nature of the arrangements and shall not impede or apply censorship to correspondence from MINURSO or its staff.

It is understood that the Government of Morocco shall provide, at no cost to the United Nations and in agreement with the Special Representative, the land and premises required for the exercise of MINURSO's functions and the accommodation of its staff. All the land and premises shall be inviolable and under the exclusive authority and supervision of the United Nations.

...

MINURSO and its staff shall be under obligation to refrain from any acts or activities which are incompatible with the impartial and international character of their functions or contrary to the spirit of this Agreement. The Special Representative shall take the necessary steps to ensure that those obligations are fulfilled.

The Government of Morocco undertakes to respect the exclusively international status of MINURSO.

If you should agree to these provisions, I propose that this letter and the written confirmation of your acceptance should constitute an agreement between the United Nations and Morocco, which shall enter into

force on the date of the arrival of the first MINURSO unit at the designated premises required to conduct MINURSO operations in the mission area.

(*Signed*) Javier PÉREZ DE CUÉLLAR
Secretary-General

II

LETTER FROM THE MINISTRY OF FOREIGN AFFAIRS AND COOPERATION OF THE KINGDOM OF MOROCCO[31]

15 January 1992

I have the honour to acknowledge receipt today of your letter dated 13 December 1991, which reads as follows:

[See letter I]

I have the honour to confirm to you the agreement of the Moroccan Government with the above.

(*Signed*) Abdellatif FILALI
Minister for Foreign Affairs and Cooperation

(*s*) Exchange of letters constituting a memorandum of understanding between the United Nations and the Government of China on the United Nations/ESCAP/UNDRO Workshop on the Application of Space Techniques to Combat Natural Disasters,[32] to be held at Beijing from 23 to 27 September 1991. New York, 9 and 11 September 1991

I

LETTERS FROM THE UNITED NATIONS

9 September 1991

(*a*)

...

On behalf of the United Nations, I should be grateful to receive your Government's acceptance of the following arrangements regarding the services to be provided for the Workshop:

...

D. *The Convention on the Privileges and Immunities of the United Nations*

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

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

(*b*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons referred to in paragraph D. 1 (*a*) above, performing frunctions in connection with the Workshop shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Workshop.

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

3. It is further understood that your Government will be responsible for dealing with any action, claim or other demand against the United Nations and its personnel arising out of: (i) injury to person or damage to property in conference or office premises provided for the Workshop; (ii) the transportation provided by your Government; and (iii) the employment for the Workshop of personnel provided or arranged by your Government; and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except where it is agreed by the parties that the injury or damage is attributable to gross negligence or wilful misconduct on the part of the United Nations or its personnel.

. . .

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute a memorandum of understanding between the United Nations and the Government of China in respect of the Workshop.

(*Signed*) Vasiliy S. SAFRONCHUK
Under-Secretary-General for
Political and Security Council Affairs

(*b*)

In connection with the exchange of letters between the United Nations and the Permanent Mission of the People's Republic of China to the United Nations concerning the arrangements for the above Workshop, I have the honour to state the following United Nations position regarding

the personnel provided by the Government of China for servicing the session.

In accordance with the long-standing practice of the United Nations relating to meetings held outside established Headquarters and pursuant to the relevant articles of the Charter of the United Nations, personnel provided by the Government 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.

(*Signed*) Vasiliy S. SAFRONCHUK
Under-Secretary-General for
Political and Security Council Affairs

II

LETTER FROM THE PERMANENT MISSION OF CHINA TO THE UNITED NATIONS

11 September 1991

I am writing to acknowledge the receipt of your letter dated 9 September 1991 regarding the arrangements for the above Workshop.

With this letter, I wish to reaffirm that the Chinese Government will provide for the jointly sponsored activity the necessary privileges and immunities in accordance with Article 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations to ensure the full success of the Workshop.

(*Signed*) LI Daoyu
Permanent Representative of China
to the United Nations

(*t*) Exchange of letters constituting an agreement between the United Nations and the Government of Italy on the participation of the United Nations and other organizations of the United Nations system in the International Specialized Exhibition in Genoa in 1992.[33] New York, 16 September and 2 October 1991

I

LETTER FROM THE UNITED NATIONS

16 September 1991

. . .

I wish to propose that the following terms shall apply to the participation of the United Nations organizations in the Exhibition:

(*a*) The Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, to which Italy acceded on 3 February 1958 and 30 August 1985, respectively, shall be applicable in respect of the participation of the United Nations organizations in the Exhibition. Officials of the United Nations performing functions in connection with the participation of the United Nations in the Exhibition, and the property of the United Nations used in connection with such participation, shall enjoy the privileges and immunities provided under, respectively, articles V and VII, and article II, of the Convention on the Privileges and Immunities of the United Nations. Officials of the specialized agencies performing functions in connection with the participation of the specialized agencies in the Exhibition, and the property of the specialized agencies used in connection with such participation, shall enjoy the privileges and immunities provided under, respectively, articles VI and VII, and article III, of the Convention on the Privileges and Immunities of the Specialized Agencies.

(*b*) The United Nations organizations shall be exempt from all taxes on exhibited products sold during the Exhibition, or after the end of the Exhibition.

(*c*) All officials of the United Nations organizations performing functions in connection with the Exhibition shall have the right of unimpeded entry into and exit from Italy. Visas and entry permits, where required, shall be granted free of charge, and as promptly as possible.

. . .

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an agreement between the United Nations and the Government of Italy regarding the participation of the United Nations organizations in the International Specialized Exhibition in Genoa in 1992.

(*Signed*) Satya N. NANDAN
Under-Secretary-General
United Nations Organizations Coordinator
International Specialized Exhibition
Genoa 1992

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF ITALY TO THE UNITED NATIONS

2 October 1991

I refer to your letter dated 16 September 1991 concerning the International Specialized Exhibition being organized in Genoa from 15 May to 15 August 1992, to which the United Nations and several specialized agencies have been invited and have agreed to participate.

I have the pleasure to confirm herewith that my Government accepts the arrangements and the provisions therein contained.

Your letter and this answer shall constitute an agreement between the United Nations and the Government of Italy regarding the participation of the United Nations organizations in the International Specialized Exibition in Genoa in 1992.

(*Signed*) Vieri TRAXLER

(*u*) Agreement between the United Nations (Office of the United Nations High Commissioner for Refugees) and the Government of South Africa governing the Legal Status, Privileges and Immunities of the UNHCR Office and its Personnel in South Africa.[34] Signed at Geneva on 2 October 1991

Article II

PURPOSE AND SCOPE OF THIS AGREEMENT

Section 2. This Agreement embodies the basic conditions under which UNHCR shall, within the terms of its mandate, and in cooperation with the Government, open an office in South Africa, and carry out its mandated functions in favour of returnees in accordance with the provisions of the Memorandum.[35]

...

Article IV

STATUS OF UNHCR OFFICE

PRESENCE

Section 4. UNHCR shall establish and maintain an office in South Africa for the purpose of discharging its functions in terms of the Memorandum and of its mandate.

Section 5. UNHCR personnel, in keeping with the statute and mandate of the Office, shall perform their functions in a strictly humanitarian, neutral and non-partisan manner.

Section 6. The Government undertakes to respect the exclusively international nature and humanitarian character of UNHCR. The Government shall at all times grant UNHCR personnel unimpeded access to returnees in order to monitor their return to places of origin or choice, including their safety and physical well-being, and to the sites of the UNHCR-assisted projects in order to monitor all phases of their implementation.

Section 7. UNHCR shall exercise its mandated functions, itself or through an implementing partner, including liaising with concerned gov-

ernmental, intergovernmental and non-governmental organizations functioning in South Africa.

UNITED NATIONS FLAG, EMBLEM AND MARKINGS

Section 8. UNHCR shall display the United Nations flag and/or emblem at or on its office premises, official vehicles and otherwise as agreed to between UNHCR and the Government. Vehicles, vessels and aircraft of UNHCR shall carry a distinctive United Nations emblem or marking, which shall be timeously notified to the Government.

. . .

Article VII

PRIVILEGES AND IMMUNITIES

Section 17. The Government shall extend to UNHCR, its premises, property, funds and assets, and to UNHCR personnel, the relevant privileges and immunities of the Convention, which are incorporated in annexes A, B, C and D and which shall constitute integral parts of this Agreement. The Government also agrees to grant to UNHCR and its personnel such additional privileges and immunities as may be necessary for the effective exercise of its mandated functions.

Article VIII

UNHCR PROPERTY, FUNDS, AND ASSETS

Section 18. UNHCR premises, property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except in so far as in any particular case the United Nations has expressly waived its immunity; it being understood, however, that this waiver shall not extend to any measure of execution.

Section 19. The UNHCR premises 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.

Section 20. The archives of UNHCR, including all the papers, documents, correspondence, books, films, tapes, registers, databases and computerized documentation belonging to or held by it, shall be inviolable.

Section 21. No restriction will be placed on UNHCR introducing foreign currency into South Africa to fund the operations nor on the repatriation of any such funds to any countries abroad. The same privileges in regard to movement of funds related to their activities will be accorded to UNHCR as are made available to all foreign embassy bank accounts in South Africa.

Section 22. UNHCR shall buy and sell foreign exchange at the commercial rand rate of exchange as quoted by the authorized dealers in South Africa.

Article IX

EXEMPTION FROM TAXATION, CUSTOMS DUTIES, PROHIBITIONS OR RESTRICTIONS ON IMPORTS AND EXPORTS

UNHCR OFFICE

Section 23. UNHCR shall be exempted from all dues and taxes, direct or indirect, personal or real, national, regional or municipal, other than such as represent payment for specific services rendered. Thus the Government shall exempt UNHCR from excise duties, sales tax and value-added tax, and from taxes on the sale or purchase by UNHCR of movable and immovable property in South Africa. UNHCR and the Government will agree on the appropriate administrative arrangements for the disposal of movable and immovable property and for the remission or refund of the amount of duty, tax or levy where it is not feasible to make direct exemption.

Section 24. UNHCR, its assets, income and other property shall be exempt from:

(*a*) All direct and indirect taxes, provided that UNHCR will not be entitled to exemptions for charges for public utility services;

(*b*) Customs duties, prohibitions or restrictions on articles imported or exported by UNHCR or its intergovernmental implementing partner(s) for their official use provided that the articles imported under such exemption will not be sold in South Africa except under conditions agreed upon with the Government;

(*c*) Customs duties, prohibitions or restrictions in respect of the import and export of its publications;

Section 25. Any materials, articles or goods imported or purchased locally by UNHCR, on its own behalf or on the behalf of its implementing partner(s), in connection with the discharge of its functions in terms of the Memorandum, its mandate and of this Agreement, shall be exempt from all customs and excise duties, prohibitions or restrictions. To the end that importation, clearance and exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between UNHCR and the Government.

UNHCR OFFICIALS

Section 26. UNHCR officials, excluding those who are South African nationals and are recruited locally, shall be exempt from taxations on the pay and emoluments paid to them by UNHCR, and, for the international staff, on any income received from outside South Africa.

Section 27. UNHCR officials, excluding those who are recruited locally, shall be accorded the same privileges in respect of exchange facilities as are accorded to diplomatic envoys in South Africa.

Section 28. UNHCR officials, excluding those who are recruited locally, shall be exempt from all other national, regional or municipal dues and taxes, whether direct or indirect, except:

(*a*) Dues and taxes on property that is privately owned and situated in South Africa;

(*b*) Dues and taxes on private income having its source in South Africa and capital taxes made on investments made in commercial undertakings in South Africa;

(*c*) Charges levied for specific services rendered;

(*d*) Registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property which is privately held;

(*e*) Estate, succession or inheritance duties levied in respect of immovable property acquired in South Africa.

Article X

COMMUNICATION FACILITIES

Section 29. 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 integovernmental/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.

Section 30. 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.

Section 31. 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.

Section 32. UNHCR shall have the right to erect and operate radio and other telecommunications equipment, on United Nations–registered frequencies which have been coordinated with the Government and on frequencies allocated by the Government, between its offices, within and outside South Africa, and in particular with the UNHCR headquarters in Geneva; provided that this right shall not, without the consent of the Government, extend to point-to-point radio communication between fixed points in South Africa where a suitable terrestrial telephone infrastructure already exists.

Article XI

UNHCR PERSONNEL

Section 33. UNHCR may assign to its offices established in South Africa such officials, experts and other personnel as UNHCR deems necessary for the effective discharge of its mandated humanitarian functions.

CHIEF OF MISSION

Section 34. The Chief of Mission, the Deputy Chief of Mission and other senior officials as may be agreed between UNHCR and the Government, shall enjoy, while in South Africa, in respect of themselves, their spouses and dependent relatives, the privileges and immunities, exemptions and facilities as are normally accorded to diplomatic envoys in terms of South African law, including, but not limited to, the privileges and immunities enumerated in annex A of this Agreement. For this purpose, the Ministry of Foreign Affairs shall include their names in the Diplomatic List.

OFFICIALS

Section 35. UNHCR officials, other than the Chief of Mission, Deputy Chief of Mission and other senior officials, assigned to South Africa and whose names are for that purpose notified to the Government by the High Commissioner, shall be considered as officials within the meaning of section 17 of the Convention.

Section 36. UNHCR officials, other than the Chief of Mission, Deputy Chief of Mission and other senior officials, while in South Africa, shall enjoy such facilities, privileges and immunities necessary for the independent exercise of their functions, including, but not limited to, the privileges and immunities enumerated in annex B of this Agreement.

EXPERTS ON MISSION

Section 37. Persons other than officials, assigned to South Africa and whose names for that purpose are notified to the Government by the High Commissioner, shall be considered as experts on mission within the meaning of section 22 of the Convention.

Section 38. All experts on mission, while in South Africa, shall enjoy such facilities, privileges and immunities necessary for the independent exercise of their functions, including, but not limited to, the privileges and immunities enumerated in annex C of this Agreement.

PERSONS PERFORMING SERVICES ON BEHALF OF UNHCR

Section 39. Except as the parties may otherwise agree, the Government shall grant to all persons performing services on behalf of UNHCR, other than South African nationals employed locally, such facilities, privileges and immunities necessary for the independent exercise of their

functions, including, but not limited to, the privileges and immunities enumerated in annex D of this Agreement.

LOCALLY RECRUITED PERSONNEL

Section 40. UNHCR may recruit locally in South Africa such personnel as it requires. The Government undertakes, upon the request of the High Commissioner, to assist UNHCR in the recruitment of such personnel. The terms and conditions of employment for locally recruited personnel shall be prescribed by UNHCR in accordance with United Nations Staff Rules and Regulations and administrative instructions.

Section 41. 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.

Article XII

ENTRY, RESIDENCE, DEPARTURE AND TRAVEL DOCUMENTS

Section 42. The Chief of Mission, Deputy Chief of Mission and other international personnel shall, whenever so required by the High Commissioner, have the right to enter into, reside in and depart from South Africa from agreed points of entry and exit. Unitd Nations *laissez-passer*, held by the UNHCR staff, shall be accepted as valid travel/identification documents by the Government and holders of such documents shall be granted facilities for speedy travel to, through and from South Africa as promptly as possible free of charge.

Article XIII

NOTIFICATION

Section 43. The High Commissioner shall notify the Government of the names and categories of UNHCR officials, experts on mission and persons performing services on behalf of UNHCR, and of any change in the status of such personnel.

Article XIV

IDENTIFICATION

Section 44. The Government shall, at the request of the High Commissioner, issue to each UNHCR official, as soon as possible after such official's assignment to South Africa, as well as to all locally recruited personel, other than those who are locally recruited and are assigned to hourly rates, the appropriate certificates of identity.

Section 45. UNHCR personnel, including locally recruited personnel, shall be required to present, but not to surrender, their certificates of identity upon demand of an authorized official of the Government.

Section 46. UNHR shall, upon the termination of employment or reassignment from South Africa of UNHCR personnel, ensure that their certificates of identity are returned promptly to the Government.

Article XV

DECEASED STAFF MEMBERS

Section 47. The High Commissioner shall have the right to take charge of and to remove the body of a member of international personnel of UNHCR who dies in South Africa, in accordance with the applicable United Nations procedures; it is understood that in the exercise of this right due consideration shall be taken of the relevant judicial requirements in force in South Africa.

Section 48. The High Commissioner will also have the right to remove from South Africa the personal property of the deceased staff member. The Government shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which was due solely to the presence in South Africa of the deceased as a member of UNHCR personnel.

Article XVI

WAIVER OF IMMUNITY

Section 49. Privileges and immunities are granted to UNHCR personnel in the interests of the United Nations and not for the personal benefit of the individuals concerned. Accordingly, the Secretary-General of the United Nations may waive the immunity of any of the UNHCR personnel 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.

(*v*) Exchange of letters constituting an agreement between the United Nations and the Government of Spain concerning the United Nations European Regional Seminar on the Question of Palestine,[36] to be held at Madrid from 27 to 30 May 1991. New York, 17 and 25 April 1991

I

LETTER FROM THE UNITED NATIONS

17 April 1991

. . .

With the present letter I have the honour to propose to your Government that the following terms should apply to the Seminar:

1. (*a*) The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947, to which Spain is a party, shall be applicable in respect of the Seminar. The representatives of member countries invited by the United Nations to participate in the Seminar shall enjoy the privileges and immunities accorded by article IV of the Convention. Participants invited by the United Nations shall possess the status of experts on mission for the United Nations within the meaning of article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided for under articles V and VII of the Convention;

(*b*) The locally employed personnel for the Seminar shall be staff recruited by the United Nations information centre in Madrid and shall, consequently, possess the status provided for in article 8 of the Agreement between Spain and the United Nations on the establishment of a United Nations information centre in Spain;

(*c*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies, all participants and persons performing functions in connection with the Seminar shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar.

2. All participants and individuals performing functions in connection with the Seminar shall have the right of unimpeded entry into and exit from Spain. Visas and entry permits, where required, shall be granted free of charge and with all due dispatch.

3. It is understood that the Government of Spain shall be responsible for dealing with any claim against the United Nations arising out of:

(*a*) Injury or damage to persons or property in conference or office premises provided for the Seminar;

(*b*) Transport provided by the Government;

(*c*) The employment for the Seminar of personnel provided or arranged for by the Government.

. . .

I further propose that upon receipt of your Government's acceptance of this proposal the present letter and the letter in reply from your Government shall constitute an agreement between the Government of Spain and the United Nations concerning the arrangements for the Seminar.

(*Signed*) Ronald I. SPIERS
Under-Secretary-General for Political and General Assembly Affairs and Secretariat Services

II

LETTER FROM THE PERMANENT MISSION OF SPAIN TO THE UNITED NATIONS[37]

25 April 1991

I have the honour to acknowledge receipt of your letter dated 17 April 1991 concerning the holding of a European Regional Seminar on the Question of Palestine in Madrid from 27 to 30 May 1991.

In this note, you propose that the following provisions should be applied to the holding of the seminar:

[See letter I]

I wish to inform you of the Spanish Government's agreement with the terms set forth in the said letter, which, together with the present letter, shall constitute an agreement between the Government of Spain and the United Nations regarding the arrangements for the holding of the aforementioned Seminar.

(*Signed*) Francisco J. VIQUEIRA
Chargé d'affaires, a.i.

(*w*) Exchange of letters constituting an agreement between the United Nations and the Government of Cyprus concerning the Asian Regional Seminar and NGO Symposium on the Question of Palestine,[38] to be held at Nicosia from 20 to 24 January 1992. New York, 29 October and 22 November 1991

I

LETTER FROM THE UNITED NATIONS

29 October 1991

. . .

With the present letter I have the honour to propose to your Government that the following terms should apply to the Seminar/Symposium:

(i) The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, shall be applicable in respect of the Seminar/Symposium. The representatives of States invited by the United Nations to participate in the Seminar/Symposium and the members and observers of the Committee on the Exercise of the Inalienable Rights of the Palestinian People shall enjoy the privileges and immunities accorded by article IV of the Convention and all other 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 Seminar/Sympo-

sium shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Seminar/Symposium shall be accorded the privileges and immunities provided under articles VI and VII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations on 21 November 1947;

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

(iii) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Seminar/Symposium;

(iv) All participants and all United Nations officials performing functions in connection with the Seminar/Symposium shall have the right of unimpeded entry into and exit from Cyprus. Visas and entry permits, where required, shall be granted promptly upon application and free of charge. Arrangements shall also be made to ensure that visas for the duration of the Seminar/Symposium are delivered at airport or other point of entry to participants who were unable to obtain them prior to their arrival;

(v) It is further understood that the Government of Cyprus will be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (*a*) injury to person or damage of property in conference or office premises provided for the Seminar/Symposium; (*b*) the transportation provided by the Government; and (*c*) the employment for the Seminar/Symposium of personnel provided by the Government; and the Government of Cyprus shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand;

. . .

I further propose that upon receipt of your Government's acceptance of this proposal the present letter and the letter in reply from your Government shall constitute an agreement between the Government of Cyprus and the United Nations concerning the arrangements for the Semninar and Symposium.

(*Signed*) Ronald I. SPIERS
Under-Secretary-General for Political and General Assembly Affairs and Secretariat Services

II

LETTER FROM THE PERMANENT MISSION OF CYPRUS TO THE UNITED NATIONS

22 November 1991

I have the honour to acknowledge receipt of your letter dated 29 October 1991 in which, *inter alia*, you conveyed to my Government proposed terms that should apply to the Asian Regional Seminar and NGO Symposium scheduled to be held at Nicosia, Cyprus, from 20 to 24 January 1992.

I am pleased to convey to you my Government's acceptance of the proposed terms and its understanding that such acceptance when received by you shall constitute an agreement between the Government of Cyprus and the United Nations concerning the arrangements for the Seminar/Symposium.

(*Signed*) Andreas MAVROMMATIS
Permanent Representative

(*x*) Exchange of letters constituting an agreement between the United Nations (United Nations Environment Programme) and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the arrangements for the Meeting of Experts to Discuss Draft Proposals for an Intergovernmental Mechanism for Chemical Risk Assessment and Management.[39] Nairobi, 30 October 1991, and London, 26 November 1991

1. I have the honour to refer to arrangements for the Meeting of Experts to Discuss Draft Proposals for an Intergovernmental Mechanism for Chemical Risk Assessment and Management, 16-19 December 1991, that the United Nations Environment Programme is convening in London, United Kingdom.

2. It is my understanding that:

(*a*) Being a meeting convened by the United Nations, the general Convention on the Privileges and Immunities of the United Nations ("the Convention") and the Convention on the Privileges and Immunities of the Specialized Agencies ("the Specialized Agencies Convention"), to both of which the United Kingdom is party, would apply, as appropriate, to persons attending the Meeting. In particular:

(i) The representatives of Members of the United Nations would enjoy the privileges and immunities provided under article IV of the Convention. Officials of the United Nations performing functions in connection with the Meeting would enjoy the privileges and immunities provided under articles V and VII of the Convention. Representatives of States not Members of the

United Nations, and persons invited by UNEP and falling within the following categories:

—Organizations that have received invitations from UNEP to participate in the Meeting in the capacity of observers, and national liberation movements;

—Other intergovernmental organizations;

—Non-governmental organizations;

—Other persons invited by UNEP,

who are designated by the Secretary-General as experts on mission for the United Nations, following consultations between the Government and UNEP, would enjoy the privileges and immunities provided under article VI of the Convention;

(ii) Officials of the specialized agencies participating in the Meeting would enjoy the privileges and immunities provided under articles VI and VIII of the Specialized Agencies Convention;

(*b*) All participants, and all persons performing functions in connection with the Meeting, will have the right of unimpeded entry into and exit from the United Kingdom. Visas and entry permits, where required, will be granted free of charge. Applications should be made at least four weeks before the opening of the Meeting in question, in which case visas will be granted not later than two weeks before the opening of the Meeting. If applications are made less than four weeks before the opening, visas will be granted as speedily as possible.

(*c*) The Government will allow importation, tax-free and duty-free, of all articles for the official use of the Secretariat. No articles imported under this exemption may be sold, hired or lent out or otherwise disposed of in the United Kingdom, except under conditions agreed with the Government.

(*d*) The Government will be responsible for dealing with any action, claim or other demand against the United Nations or its officials arising out of:

(i) Injury to persons or damage to or loss of property in conference or office premises provided for the Meeting;

(ii) Injury to persons or damage to or loss of property caused by, or incurred in using, the transport services that are provided for the Meeting by or under the control of the Government;

(iii) The employment for the Meeting of personnel provided or arranged by the Government;

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

. . .

3. I propose that this letter and your affirmative answer will place on record the understanding between the Government of the United King-

dom and the United Nations Environment Programme regarding privileges and immunities, and related matters, for the Meeting.

(*Signed*) Mostafa K. TOLBA
Executive Director
United Nations Environment Programme
30 October 1991

(*Signed*) Stephen DURRELL
Parliamentary Under-Secretary of State for Health, Ministry of Health of the United Kingdom of Great Britain and Northern Ireland
26 November 1991

(*y*) Agreement between the United Nations and the Government of China regarding Arrangements for the Forty-eighth Session of the United Nations Economic and Social Commission for Asia and the Pacific[40] [to be held at Beijing from 14 to 23 April 1992], with exchange of letters. Signed at Bangkok on 6 December 1991

Article VIII

LIABILITY

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

(*a*) Injury to persons or damage to or loss of property in the premises;

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

(*c*) The employment for the Session of the personnel provided by the Government.

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

Article IX

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which

the People's Republic of China is a party, shall be applicable in respect of the Session.

2. The representatives or observers referred to in article II, paragraph 1 (*c*), (*e*) and (*f*), above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Session.

3. The representatives of the specialized or related agencies shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

4. Without prejudice to the preceding paragraphs of the present article, all participants at the Session, as referred to in article II, shall be accorded maximum facilities and courtesies necessary for the independent exercise of their functions in connection with the Session.

5. All persons referred to in article II shall have the right of entry into and exit from the People's Republic of China, and no impediment shall be imposed on their transit to and from the conference area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible.

6. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the conference premises shall be inviolable for the duration of the Session, including the preparatory stage and the winding-up.

7. All persons referred to in article II, above, shall have the right to take out of the People's Republic of China at the time of their departure, any unexpended portions of the funds they brought in to the People's Republic of China in connection with the Session and to reconvert any such funds at the rate of exchange in force at the date of reconversion.

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

EXCHANGE OF LETTERS

I

LETTER FROM THE UNITED NATIONS

6 December 1991

In connection with the Agreement between the United Nations and the Government of the People's Republic of China concerning arrangements for the forty-eighth session of the United Nations Economic and Social Commission for Asia and the Pacific, to be held, at the invitation of the Government of the People's Republic of China, at Beijing, during the period 14 to 23 April 1992, I have the honour to state the following United

Nations position regarding the personnel provided by the Government to service the session:

In accordance with the long-standing practice of the United Nations relating to meetings held outside established headquarters and pursuant to the relevant articles of the Charter of the United Nations, personnel provided by the Government 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.

(*Signed*) S. A. M. S. KIBRIA
Executive Secretary
Economic and Social Commission
for Asia and Pacific

II

LETTER FROM THE AMBASSADOR OF CHINA TO THAILAND AND PERMANENT REPRESENTATIVE TO THE ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC[41]

6 December 1991

With regard to your letter dated 6 December 1991 concerning arrangements for the forty-eighth session of the United Nations Economic and Social Commission for Asia and the Pacific, to be held, at the invitation of the Government of the People's Republic of China, at Beijing, during the period 14 to 23 April 1992, I have been instructed by my Government to state the following:

To enable the said session to achieve complete success, the Government of China agrees to provide the session with the necessary privileges and immunities in accordance with the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations.

(*Signed*) Shichun LI

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3. AGREEMENTS RELATING TO THE UNITED NATIONS CHILDREN'S FUND

Agreement between the United Nations (United Nations Children's Fund) and the Government of Belize[42] [Basic Cooperation Agreement].[43] Signed at Belize City on 5 September 1990

Article IX

PRIVILEGES AND IMMUNITIES

1. The Government shall extend to UNICEF, its property, funds and assets, and to its officials and experts on mission, the privileges and

immunities set out in the Convention [on the Privileges and Immunities of the United Nations].

2. Without prejudice to the provisions of paragraph 1 of the present article, the Government shall in particular extend to UNICEF and its personnel the privileges, immunities, rights and facilities provided in articles X to XVII hereunder.

Article X

UNICEF OFFICE, PROPERTY, FUNDS AND ASSETS

1. The premises of the UNICEF office shall be inviolable. The appropriate Government authorities shall exercise due diligence to ensure the security and protection of the premises of the UNICEF office.

2. Without being restricted by financial controls, regulations or moratoriums of any kind, UNICEF may freely:

(*a*) Bring into the country from any other country and acquire from authorized banking and financial institutions, funds, securities, currencies of any kind and negotiable instruments;

(*b*) Accept funds, securities, currencies of any kind and negotiable instruments conveyed to UNICEF through bequests, or obtained from UNICEF activities in the country;

(*c*) Hold and use funds, securities, currencies of any kind and negotiable instruments for its programmes in the country, maintain and operate accounts in any currency, and convert any currencies held by it into any other currency;

(*d*) Transfer its funds, securities, currencies of any kind and negotiable instruments from the country to any other country or within the country, to individuals, firms, institutions or agencies, including any organization or agency of the United Nations system.

3. The rate of exchange available to UNICEF for the financial activities envisaged above shall be the most favourable, legally available rate of exchange.

4. In exercising the rights accorded to it under paragraph 2 of the present article, UNICEF shall pay due regard to any representation made to it by the Government and shall endeavour to give effect thereto, so far as this is possible without detriment to its own interests.

Article XI

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 other Government, including its diplomatic missions, or to other intergovernmental organizations in matters of establishment and operation, priorities, tariffs, charges on mail, cablegrams, teleprinters, 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 to be added by joint agreement. UNICEF shall be entitled to use codes and to dispatch and receive correspondence either by courier or in sealed pouches, all of which shall be inviolable and not subject to censorship.

3. UNICEF shall be entitled, in establishment and operation of its official communications, to the benefits of the International Telecommunication Convention (Nairobi, 1982) and the regulations annexed thereto.

Article XII

FACILITIES IN RESPECT OF MEANS OF TRANSPORTATION

The Government shall grant UNICEF necessary permits or licences 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 XIII

UNICEF PERSONNEL

OFFICIALS

1. UNICEF officials while in the country, other than nationals of the host country employed locally, shall enjoy the following privileges and immunities:

(*a*) Immunity from legal process of any kind in respect of words spoken or written or in respect of any act performed in an official capacity. Such immunity will continue even after termination of employment with UNICEF;

(*b*) The same protection and repatriation facilities with respect to themselves, their spouses and other dependants as are accorded in time of crisis to diplomatic envoys;

(*c*) Exemption from taxation in respect of salaries, emoluments and allowances paid by UNICEF;

(*d*) Prompt clearance and issuance without cost of necessary visas, licences or permits necessary for the effective exercise of their functions;

(*e*) Free movement within or to or from the country, to the extent necessary for the implementation of the programmes of cooperation;

(*f*) Exemption, with respect to themselves, their spouses and other dependants from immigration restriction and alien registration;

(*g*) The issuance of any permits necessary for importation of household and personal effects or other property, materials and supplies intended for their personal use or consumption and authorization to take any of them out of the country on completion of their assignment;

(*h*) Immunity from service in the military and any other obligatory service.

2. National Professional officers and General Service staff who are nationals of the host country, employed locally, shall be entitled to the rights and facilities in subparagraphs (*a*), (*c*), (*e*) and (*h*) of paragraph 1 of this article.

EXPERTS ON MISSION

3. Experts on mission shall be granted the privileges and immunities specified in article VI, sections 22 and 23, of the Convention.

Article XIV

PERSONS PERFORMING SERVICES

Persons performing services on behalf of UNICEF, other than nationals of the host country employed locally, shall be granted the privileges and immunities specified in article V, section 18, of the Convention. They shall, in particular, be granted the rights and facilities set forth in subparagraphs (*c*), (*d*), (*e*) and (*g*) of paragraph 1 of article XIII of the present Agreement.

Article XV

OTHER PERSONNEL

1. All other personnel recruited locally by UNICEF and assigned to hourly rates to perform services for UNICEF 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 personnel recruited locally by UNICEF 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 and governing bodies of UNICEF.

Article XVI

HEAD OF THE UNICEF OFFICE

The head of the UNICEF office shall enjoy the privileges, immunities and facilities granted to heads of diplomatic missions accredited to the Government. For this purpose his name shall be incorporated into the diplomatic list. The senior officials, as may be agreed between UNICEF and the Government, shall enjoy the same privileges and immunities

accorded by the Government to the members of diplomatic missions of comparable ranks.

Article XVII

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 or other local taxes.

Article XVIII

WAIVER OF PRIVILEGES AND IMMUNITIES

The privileges and immunities accorded under the present Agreement are granted in the interest of the United Nations, including UNICEF, 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 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 XIX

CLAIMS AGAINST UNICEF

1. UNICEF cooperation in programmes under the present Agreement is provided for the benefit of the Government and people of the host country and, therefore, the Government shall bear all the risks of the operations under the present Agreement.

2. The Government shall, in particular, be responsible for dealing with all claims, arising from or directly attributable to the operations under the present Agreement, which may be brought by third parties against UNICEF, UNICEF officials, experts on mission and persons performing services on behalf of UNICEF and shall, in respect of such claims, indemnify and hold them harmless, except where the Government and UNICEF agree that the particular claim or liability was caused by gross negligence or wilful misconduct.

4. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME

(*a*) Standard Basic Assistance Agreement between the recipient Government and the United Nations Development Programme.[44]

Article III

EXECUTION OF PROJECTS

5. [See *Juridical Yearbook, 1973*, p. 24]

Article IX

PRIVILEGES AND IMMUNITIES

[See *Juridical Yearbook, 1973*, p. 25]

Article X

FACILITIES FOR EXECUTION OF UNDP ASSISTANCE

[See *Juridical Yearbook, 1973*, pp. 25 and 26]

Article XIII

GENERAL PROVISIONS

4. [See *Juridical Yearbook, 1973*, p. 26]

Agreements between the United Nations (United Nations Development Programme) and the Governments of Senegal,[45] Kenya,[46] Romania,[47] Albania[48] and Cameroon.[49] Signed respectively at Dakar on 4 July 1987, at Nairobi on 17 January 1991, at Bucharest on 23 January 1991, at Tirana on 17 June 1991 and at Yaoundé on 25 October 1991.

These agreements contain provisions similar to articles III, paragraph 5, IX, X and XIII, paragraph 4, of the Standard Basic Assistance Agreement except that in the Agreement with Cameroon the provision of article IX does not grant the privileges and immunities described in it to the persons "who reside permanently in the country".

(*b*) Agreement between the United Nations (United Nations Development Programme) and the Government of the Argentine Republic on the Establishment of a National Office for the Technological Information Pilot System.[50] Signed at Buenos Aires on 1 November 1991[51]

Article 4

The Government shall accord, to the TIPS [Technological Information Pilot System] National Office, in its capacity as a UNDP executing agency, as well as to its assets and to the duly accredited foreign specialists who are not permanent residents of the Argentine Republic, those privileges and immunities stipulated by the Agreement in force between the Governmnent and UNDP.

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

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.[52] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1991 the following States acceded to the Convention or, if already parties, undertook by a subsequent notification to apply the provisions of the Convention, in respect of the specialized agencies indicated below:

State	*Date of receipt of instrument of accession or notification*	*Specialized agencies*
Zimbabwe	5 March 1991	ILO, FAO (second revised text of annex II), ICAO, UNESCO, IMF, IBRD, WHO (third revised text of annex VII), UPU, ITU, WMO, IMO (revised text of annex XII), IFC, IDA, WIPO, IFAD, UNIDO.
Czechoslovakia	26 April 1991	IMF, IBRD, IFC, IDA
Austria	2 July 1991	WIPO
Hungary	12 November 1991	ICF, IDA

As of of 31 December 1991, 96 States were parties to the Convention[53]

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Agreements based on the standard "Memorandum of Responsibilities" in respect of FAO sessions

Agreements concerning specific sessions held outside FAO headquarters, containing provisions on privileges and immunities of FAO and participants similar to the standard text,[54] were concluded in 1991 with the Governments of the following countries acting as hosts to such sessions: Argentina,[55] Australia, Bolivia, Botswana, Bulgaria, Burkina Faso, China, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Denmark, Ethiopia, France,[55] Germany,[55] Ghana, Greece, Hungary, India,[55] Indonesia, Iran (Islamic Republic of), Italy,[55] Malawi, Malaysia, Malta, Mexico,[55] Monaco,[55] Morocco, Nepal, Norway, Portugal, Switzerland,[55] Syrian Arab Republic, Thailand, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland,[55] Venezuela and Zimbabwe.

(*b*) Agreements based on the standard "Memorandum of Responsibilities" in respect of seminars, workshops, training courses or related study tours

Agreements concerning specific training activities, containing provisions on privileges and immunities of FAO and participants similar to the standard text,[56] were concluded in 1991 with the Governments of the following countries acting as hosts to such training activities: Argentina,[55] Austria, Côte d'Ivoire, Fiji, Kenya, Nigeria, Senegal, Tunisia and Zimbabwe.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to conferences, seminars and other meetings

(*a*) Agreement between the United Nations Educational, Scientific and Cultural Organization and the Government of Australia concerning the Meeting of Experts to Prepare Criteria on the Revision and Improvement of Textbooks from the Viewpoint of International Education[57] [to be held at Natham, Queensland, from 18 to 22 March 1991]. Signed at Canberra on 7 February 1991

Privileges and Immunities

The Government of Australia 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 thereof, to which Australia has been a party since 9 May 1986. In particu-

lar, the Government shall ensure that no restriction is placed upon the entry into, sojourn in and departure from the territory of Australia 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 pertinent rules and regulations.

Damage and accidents

As long as the premises reserved for the meeting are at the disposal of UNESCO, the Government of Australia 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. However, the authorities of Australia shall be entitled to adopt appropriate measures to ensure the protection, particularly against fire and other risks, of the above-mentioned premises, facilities, furniture and persons. They 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.

(*b*) Agreements containing provisions similar to those referred to in the paragraph above also concluded between UNESCO and the Governments of other States.

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4. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Standard Basic Cooperation Agreement between the United Nations Industrial Development Organization and Member States Receiving Assistance from UNIDO[58]

Article X

PRIVILEGES AND IMMUNITIES

[See *Juridical Yearbook, 1990*, p. 52]

Article XI

FACILITIES FOR THE IMPLEMENTATION OF UNIDO ASSISTANCE

1 and 2. [See *Juridical Yearbook, 1990*, p. 53]

Article XIV

GENERAL PROVISIONS

4. [See *Juridical Yearbook, 1990*, p. 53]

Agreements between the United Nations Industrial Development Organization and the Governments of Guinea[59], Albania[60] and Saint Vincent and the Grenadines.[61] Signed respectively at Conakry on 8 June 1991, at Vienna on 8 November 1991 and at Kingstown on 1 November and at Vienna on 28 November 1991.

These Agreements contain provisions similar to articles X, XI, paragraphs 1 and 2, and XIV, paragraph 4, of the Standard Basic Cooperation Agreement.

(*b*) Agreement between the United Nations Industrial Development Organization and the Government of Denmark regarding the Arrangements for a UNIDO International Conference on Ecologically Sustainable Industrial Development[62] [to be held at Copenhagen from 14 to 18 October 1991]. Signed at Vienna on18 and 24 July 1991

Article X

LIABILITY

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

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

(*b*) The employment for the Conference of the personnel provided by the Government under article VIII;

(*c*) Any transportation provided by the Government for the Conference.

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

Article XI

PRIVILEGES AND IMMUNITIES

1. In accordance with article 21 of the Constitution of UNIDO, the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which Denmark is a party, shall be applicable in respect of the Conference. In particular, the representatives, advisers and experts of States or of intergovernmental organs referred to in article II, paragraph 1 (*a*) and (*b*) above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of UNIDO performing functions in connection with the Conference referred to in article II, paragraph 2, above, shall enjoy the privileges and immunities provided under articles V

and VII of the Convention and any experts on mission for UNIDO in connection with the Conference shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The representatives or observers referred to in article II, paragraph 1 (*d*), (*e*) and (*f*), above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Conference.

3. The representatives of the specialized or related agencies, referred to in article II, paragraph 1 (*c*), above, shall enjoy the privileges and immunities provided by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

4. Without prejudice to the preceding paragraphs of the present article, all persons performing functions in connection with the Conference, including those referred to in article VIII and all those participating in the Conference, shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Conference.

5. All persons referred to in article II shall have the right of entry into and exit from Denmark, and no impediment shall be imposed on their transit to and from the conference area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference, provided the application for the visa is made at least four weeks before the opening of the Conference; if the application is made later, the visa shall be granted not later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Conference are delivered at the airport of Copenhagen or other specified points of entry to participants who were unable to obtain them prior to their arrival.

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

7. All persons referred to in article II, above, shall have the right to take out of Denmark at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Denmark in connection with the Conference and to reconvert any such funds.

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

(*c*) Agreement between the United Nations Industrial Development Organization and the Government of the Czech and Slovak Federal Republic regarding the Arrangements for UNIDO's Fourth Consultation on the Capital Goods Industry, with Emphasis on Machine Tools[63] [to be held at Prague from 16 to 20 September 1991]. Signed at Vienna on 10 September 1991

This Agreement contains provisions similar to articles X and XI of the Agreement under subsection (*b*) above.

(*d*) Agreement between the United Nations Industrial Development Organization and the Government of Greece regarding the Arrangements for UNIDO's Second Consultation on the Building Materials Industry[64] [to be held at Athens from 4 to 8 November 1991]. Signed at Vienna on 31 October 1991

This Agreement contains provisions similar to articles X and XI of the Agreement under subsection (*b*) above.

(*e*) Agreement between the United Nations Industrial Development Organization and the Government of India on Basic Terms and Conditions governing UNIDO Projects Envisaged by the Interim Programme for the International Centre for Genetic Engineering and Biotechnology (with exchange of letters).[65] Signed at Vienna on 25 March 1991

Article III

PRIVILEGES AND IMMUNITIES

1. In respect of the project activities executed within the framework of the present Agreement, the Government shall apply to UNIDO, including its organs, its property, funds, assets and its officials and experts on mission, the provisions of the Convention on the Privileges and Immunities of the United Nations or the Convention on the Privileges and Immunities of the Specialized Agencies, as applicable, in accordance with article 21 of the Constitution of UNIDO.[66] In particular, the Government shall grant the same privileges, immunities and facilities to these project activities as it usually grants to technical assistance projects implemented by UNIDO in India as an executing agency of the United Nations Development Programme.

2. For this purpose:

(*a*) Representatives of States members of the Preparatory Committee for the Establishment of the International Centre for Genetic Engineering and Biotechnology (ICGEB) and observers from Non-member States shall be assimilated to representatives of members of UNIDO;

(*b*) Members of the Panel of Scientific Advisers to the Preparatory Committee shall be considered experts on mission for UNIDO;

(*c*) Consultants employed by UNIDO for the purpose of implementing the interim programme of ICGEB shall be considered experts on mission for UNIDO;

(*d*) All papers and documents relating to the project in the possession or under the control of the persons referred to in subparagraphs (*b*) and (*c*) above shall be deemed to be documents belonging to UNIDO;

(*e*) Equipment, materials and supplies brought into, or purchased, or leased by those persons within the country for purposes of the project shall be deemed to be property of UNIDO. Such items shall nevertheless be subject to the quarantine and other health laws applicable in India to the import of live materials such as seeds, propagule, plants, animals, embryos, eggs, micro-organisms, etc.

Article IV

FACILITIES FOR THE IMPLEMENTATION OF UNIDO ACTIVITIES

1. For the purpose of implementing the privileges and immunities referred to in article III, the Government shall, in particular, grant the following facilities:

(*a*) Prompt issuance without cost of necessary visas, licences or permits;

(*b*) Access to the laboratories and premises, measuring approximately 12,000 square feet, of ICGEB, of which 10,000 square feet at the National Institute of Immunology, and 2,000 square feet in halls Nos. 409 and 411 in the Life Sciences Block of Jawaharlal Nehru University, and all necessary rights of way, as described in the annexed chart;

(*c*) Free movement within or to or from the country to the extent necessary for proper execution of UNIDO activities subject to such laws and regulations concerning zones, entry into which is prohibited or regulated by the Government for reasons of national security;

(*d*) The existing legal rate of exchange;

(*e*) Any permits necessary for the importation of equipment, materials and supplies and for their subsequent exportation;

(*f*) Any permits necessary for the importation of personal effects belonging to and intended for the personal use or consumption of officials of UNIDO, or experts on mission for UNIDO, within the first four months of taking up their posts in India, and for the subsequent exportation of such personal effects;

(*g*) Prompt release from customs of the items mentioned in subparagraphs (*e*) and (*f*) above.

2. (*a*) UNIDO shall apply in the laboratories at New Delhi, referred to in paragraph 1 (*b*) above, all relevant safety standards applicable in India. UNIDO shall be bound by the environmental laws of India. Strict safety standards shall be applied to the research activities at the above-mentioned laboratories. The safety standards shall conform to the regulations and guidelines applicable to national laboratories and other research

institutions in India pertaining to the use of hazardous chemicals, handling and disposal of radioactive isotopes and any biohazard material arising from the use of recombinant DNA technology. In addition, the safety guidelines of the National Institute of Health (NIH) (United States of America) shall be strictly adhered to in the handling of plant, animal and human pathogens and in the conduct of recombinant DNA experiments. Compliance with the guidelines in force in India, in addition to those of NIH, shall be supervised by a Standing Committee on Safety consisting of the Director of the interim programme, the Head of component, New Delhi, and three nominees of the Government. The chairmanship of the meetings of the Standing Committee shall be by rotation among the members. The day-to-day monitoring of the activities at the above-mentioned laboratories shall be carried out by a qualified, full-time Safety Officer. Records of all hazardous chemicals, biochemicals, biological materials and experiments covered under the recombinant DNA safety guidelines of the Government shall be maintained for frequent monitoring and inspection by appropriate authorities of UNIDO and of the Government;

(*b*) The Government, in accordance with its laws and regulations, shall be responsible for dealing with any actions, claims or other demands against UNIDO or its personnel arising out of personal injury or damage to property arising from activities in the laboratories and premises referred to in paragraph 1 (*b*) above, except those normally covered by the applicable employment regulations and rules of UNIDO;

(*c*) Any such action, claim or other demand arising out of events attributable to *force majeure* shall exempt the Government and UNIDO from any obligation;

(*d*) The foregoing provisions in subparagraphs (*b*) and (*c*), above, shall not apply where the Government and UNIDO have agreed that a claim or liability arises from a violation of the safety standards and environmental laws applicable in India, or from gross negligence or wilful misconduct of UNIDO officials or experts on mission for UNIDO.

EXCHANGE OF LETTERS

I

Letter from UNIDO

25 March 1991

I have the honour to refer to the Agreement between the Government of India and the United Nations Industrial Development Organization on Basic Terms and Conditions governing UNIDO Projects Envisaged by the Interim Programme for the International Centre for Genetic Engineering and Biotechnology, which will be signed today.

On the occasion of concluding the above Agreement, I would be grateful for receiving the confirmation of Your Excellency's Government of the following points:

. . .

(ii) With respect to article IV.2 (*b*) of the Agreement, it is understood that the Government's responsibility shall include, *mutatis mutandis*, the hold harmless obligation as contained in article I.6 of the Standard Technical Assistance Agreement which was concluded on 31 August 1956 between the Government and the United Nations Technical Assistance Board, as amended by the exchange of letters dated 19 June, 3 July and 3 October 1963, and the text of which is reproduced below:

"The Government shall be responsible for dealing with any claims which may be brought by third parties against the Organization(s) and their experts, agents or employees and shall hold harmless such Organization(s) and their experts, agents and employees in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government, the Executive Chairman of the Technical Assistance Board and the Organization(s) concerned that such claims or liabilities arise from the gross negligence or wilful misconduct of such experts, agents or employees."

Finally, I wish to propose that the present letter and Your Excellency's reply conveying the acceptance by the Government of the above shall constitute a binding understanding between the Government and UNIDO regarding the above-mentioned Agreement.

(*Signed*) Domingo L. SIAZON, Jr.
Director-General

II

LETTER FROM THE GOVERNMENT OF INDIA

25 March 1991

I have the honour to refer to your letter of 25 March 1991 regarding the Agreement between the Government of India and the United Nations Industrial Development Organization on Basic Terms and Conditions Governing UNIDO Projects Envisaged by the Interim Programme for the International Centre for Genetic Engineering and Biotechnology, which reads as follows:

[See letter I]

I have the honour to convey the acceptance of the Government of India of the points proposed in your letter and to confirm that this exchange of letters shall constitute a binding understanding between the Government of India and UNIDO regarding the above-mentioned Agreement.

(*Signed*) J. R. HIREMATH
Permanent Representative of India to UNIDO

(*f*) Agreement between the United Nations Industrial Development Organization and the Government of Italy on Basic Terms and Conditions governing the UNIDO Project concerning the Preparatory Phase for the Establishment of an International Centre for Science and High Technology.[67] Signed at Vienna on 29 June 1991

Article III

PRIVILEGES AND IMMUNITIES

1. In respect of the project activities executed within the framework of the present Agreement, the Government shall apply to UNIDO, including its organs, its property, funds, assets and its officials and experts on mission, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies, which is applicable in accordance with article 21 of the Constitution of UNIDO.

Article IV

FACILITIES FOR THE IMPLEMENTATION OF UNIDO ACTIVITIES

1. For the purpose of implementing the privileges and immunities referred to in article III, the Government shall, in particular, grant the following facilities:

(*a*) Prompt issuance without cost of necessary visas, licences or permits;

(*b*) Access to the premises of the International Centre for Theoretical Physics at Trieste and all necessary rights of way;

(*c*) Free movement within or to or from the country to the extent necessary for proper execution of UNIDO activities;

(*d*) The most favourable legal rate of exchange;

(*e*) Any permits necessary for the importation of equipment, materials and supplies and for their subsequent exportation;

(*f*) Any permits necessary for the importation of property belonging to and intended for the personal use or consumption of officials of UNIDO, of experts on mission for UNIDO and for the subsequent exportation of such property;

(*g*) Prompt release from customs of the items mentioned in subparagraphs (*e*) and (*f*) above.

...

2. For this purpose:

(*a*) Members of the Panel of Scientific Advisers to the project, as well as scientists participating in the committees, meetings, workshops and similar events of the project shall be considered experts on mission for UNIDO;

(*b*) Consultants employed by UNIDO, as well as trainees, shall, for the purpose of implementing the project, be considered experts on mission for UNIDO;

(*c*) All papers and documents relating to the project in the possession or under the control of the persons referred to in subparagraphs (*a*) and (*b*) above shall be deemed to be documents belonging to UNIDO;

(*d*) Equipment, materials and supplies brought into, or purchased, or leased by those persons within the country for purposes of the project shall be deemd to be property of UNIDO.

3. The level of privileges and immunities granted in accordance with the present Agreement shall be understood to be subject to such adjustment as may be required to take fully into account the general understanding concerning additional privileges and immunities to be reached between the appropriate Italian authorities and the specialized agencies of the United Nations having offices or projects in Italy. Any such adjustment shall be agreed to in a supplemental agreement to the present Agreement.

5. INTERNATIONAL ATOMIC ENERGY AGENCY

Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[68] Approved by the Board of Governors of the Agency on 1 July 1959

In 1991 there were no additional acceptances of the Agreement. As of the end of the year, 61 member States were parties to the Agreement.

NOTES

[1] United Nations, *Treaty Series*, vol. 1, p. 15.

[2] The Convention is in force with regard to each State which deposited an instrument of accession with the Secretary-General of the United Nations as from the date of its deposit.

[3] For the list of those States, see *Multilateral treaties deposited with the Secretary-General* (United Nations publication, Sales No. E.93.V.11).

[4] Came into force on 15 January 1991.

[5] Came into force on 21 February 1991.

[6] United Nations, *Treaty Series*, vol. 1252, p. 339.

[7] Ibid., vol. 600, p. 93.

[8] Came into force on 25 February 1991.

[9] For the text of the exchange of letters, see *Juridical Yearbook, 1983*, p. 32.

[10] Came into force on the date of signature.

[11] Came into force on 24 April 1991.

[12] Came into force on 24 April 1991.

[13] Came into force on 29 April 1991.

[14] Came into force on 16 May 1991.

[15] Came into force on 14 May 1991.

[16] United Nations, *Treaty Series*, vol. 33, p. 261.

[17] Ibid., vol. 374, p. 147.

[18] Came into force on 23 May 1991.

[19] United Nations, *Treaty Series*, vol. 1252, p. 339.

[20] Ibid., vol. 600, p. 93.

[21] Came into force on 7 June 1991.
[22] Came into force on 15 April 1991.
[23] Came into force on the date of signature.
[24] Came into force on 28 June 1991.
[25] Came into force on 26 July 1991.
[26] Translation from Spanish prepared by the Secretariat of the United Nations.
[27] A/44/971-S/21541, annex.
[28] Came into force on 12 August 1991.
[29] Came into force on the date of signature.
[30] Came into force on 5 September 1991.
[31] Translation from French prepared by the Secretariat of the United Nations.
[32] Came into force on 16 September 1991.
[33] Came into force on 2 October 1991.
[34] Came into force on the date of signature.
[35] Memorandum of Understanding between the United Nations (United Nations High Commissioner for Refugees) and the Government of the Republic of South Africa on the Voluntary Repatriation and Reintegration of South African Returnees, signed at Geneva on 4 September 1991; United Nations registration No. 28360.
[36] Came into force on 15 November 1991.
[37] Translation from Spanish prepared by the Secretariat of the United Nations.
[38] Came into force on 22 November 1991.
[39] Came into force on 26 November 1991.
[40] Came into force on the date of signature.
[41] Translation from Chinese prepared by the Secretariat of the United Nations.
[42] Came into force on 23 May 1991.
[43] See E/ICEF/1990/L.16.
[44] UNDP, Basic Documents Manual, chap. II (1).
[45] Came into force on 31 July 1991.
[46] Came into force on the date of signature.
[47] Came into force on the date of signature.
[48] Came into force on the date of signature.
[49] Came into force on the date of signature.
[50] Came into force on the date of signature.
[51] Translation from Spanish prepared by the Secretariat of the United Nations.
[52] United Nations, *Treaty Series*, vol. 33, p. 261.
[53] For the list of those States, see *Multilateral treaties deposited with the Secretary-General* (United Nations publication, Sales No. E.93.V.II).
[54] Reproduced in *Juridical Yearbook, 1972*, p. 32.
[55] Certain departures from the standard text or amendments thereto were introduced at the request of the host Government.
[56] Reproduced in *Juridical Yearbook, 1972*, p. 33.
[57] Came into force on the date of signature.
[58] UNIDO/IDB.1/13, annex I, adopted by the General Conference of UNIDO on 12 December 1985.
[59] Came into force on the date of signature.
[60] Came into force on the date of signature.
[61] Came into force on 28 November 1991.
[62] Came into force on 24 July 1991.
[63] Came into force on the date of signature.
[64] Came into force on the date of signature.
[65] Came into force on the date of signature.
[66] See *Juridical Yearbook, 1985*, p. 26.
[67] Came into force on the date of signature.
[68] United Nations, *Treaty Series*, vol. 374, p. 147.

Part Two

LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter III

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

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

1. DISARMAMENT AND RELATED MATTERS

(*a*) Trends in multilateral disarmament

(i) *Role of the United Nations in the field of disarmament*

The activities of the United Nations in the field of disarmament reflected, in 1991, an improving international situation and, at the same time, a clearer realization that while the end of the cold war had created new opportunities for a more peaceful future and for reinvigorating disarmament efforts, much remained to be done. Arms limitation and disarmament efforts in 1991 took place in a dramatically altered situation, especially in relation to the bilateral nuclear issues between the United States and the Soviet Union and in the areas of East-West conventional disarmament and security cooperation in Europe. As a result, arms limitation and disarmament played a major role in the complex process of consolidating peace. At the same time, the international community continued to espouse a multidimensional approach to peace and security, an approach stressing the need to consider the military aspects of the problem in relation to other priorities such as development, welfare, the environment and the protection of human rights.

By its resolution 46/38 A of 6 December 1991,[1] the General Assembly noted with satisfaction that the Disarmament Commission had successfully implemented its reform programme and had made considerable progress on substantive items on its agenda, pursuant to the "Ways and means to enhance the functioning of the Disarmament Commission" adopted at its 1990 substantive session;[2] recalled the role of the Commission as the specialized, deliberative body within the United Nations multilateral disarmament machinery that allowed for in-depth deliberations on specific disarmament issues, leading to the submission of concrete recommendations on those issues; and requested the Disarmament Commission to continue its work in accordance with its mandate, as set forth in paragraph 118 of the Final Document of the Tenth Special Session of the General Assembly,[3] and with paragraph 3 of resolution 37/78 H of 9 December 1982, and to that end to make every effort to achieve specific recommendations on the items on its agenda, taking into account the

above-mentioned "Ways and means" to enhance its functioning. Moreover, by its resolution 46/38 C of the same date,[4] the Assembly reaffirmed the role of the Conference on Disarmament as the single multilateral disarmament negotiating forum of the international community; welcomed the progress in the negotiations on the elaboration of a draft convention on the complete and effective prohibition of the development, production, stockpiling and use of all chemical weapons and on their destruction, and urged the Conference on Disarmament to intensify its work with a view to completing negotiations on such a draft convention in 1992; and called upon the Conference to strengthen its work, within the framework of ad hoc committees as the most appropriate mechanism, and to adopt concrete measures on the specific priority issues of disarmament on its agenda, in accordance with the Programme of Action set forth in section III of the Final Document of the Tenth Special Session of the General Assembly.[3] Furthermore, by its resolution 46/38 B, adopted also on the same date,[5] the General Assembly requested the Conference on Disarmament to re-establish, at the beginning of its 1992 session, the Ad Hoc Committee on the Comprehensive Programme of Disarmament; and recommended that the Ad Hoc Committee resume its work, building on the texts, already agreed to, with the view to resolving the outstanding issues and thus concluding negotiations on the programme. In addition, by its resolution 46/26 of the same date,[6] the General Assembly urged all States parties to arms limitation and disarmament agreements to implement and comply with the entirety of the spirit and provisions of such agreements; called upon all Member States to support efforts aimed at the resolution of non-compliance questions, with a view to encouraging strict observance by all parties of the provisions of arms limitation and disarmament agreements and maintaining or restoring the integrity of such agreements; welcomed the role that the United Nations had played in restoring the integrity of certain arms limitation and disarmament agreements and in the removal of threats to peace; encouraged efforts by States parties to develop additional cooperative measures, as appropriate, that could increase confidence in compliance with existing arms limitation and disarmament agreements and reduce the possibility of misinterpretation and misunderstanding; and noted, in that connection, the contribution that verification experiments and research could make and already had made in confirming and improving verification procedures in arms limitation and disarmament agreements under negotiation, thereby providing an opportunity, from the time that such agreements entered into force, for enhanced confidence in the effectiveness of verification procedures as a basis for determining compliance.

(ii) *Iraq—action under section C of Security Council resolution 687 (1991)*

In 1991, the United Nations took dramatically new actions in the sphere of disarmament as a result of Security Council resolutions adopted under Chapter VII of the Charter of the United Nations.

On 3 April, following the war in the Persian Gulf and the restoration to Kuwait of its sovereignty, independence and territorial integrity, and

after the return of its legitimate Government, the Security Council adopted resolution 687 (1991).[7]

In section C of the resolution, the Council invited Iraq to reaffirm unconditionally its obligations under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,[8] and to ratify the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, of 10 April 1972 (para. 7);[9] decided that Iraq should unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of: (*a*) all chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities related thereto; (*b*) all ballistic missiles with a range greater than 150 kilometres, and related major parts and repair and production facilities (para. 8); decided also, for the implementation of paragraph 8, the following: (*a*) Iraq should submit to the Secretary-General, within 15 days of the adoption of the resolution, a declaration on the locations, amounts and types of all items specified in paragraph 8 and agree to urgent, on-site inspection as specified below; (*b*) The Secretary-General, in consultation with the appropriate Governments and, where appropriate, with the Director-General of the World Health Organization, within 45 days of the adoption of the resolution, should develop and submit to the Council for approval a plan calling for the completion of the specified acts within 45 days of such approval, *inter alia*, the forming of a special commission which should carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities, based on Iraq's declarations and the designation of any additional locations by the Special Commission itself (para. 9); decided further that Iraq should unconditionally undertake not to use, develop, construct or acquire any of the items specified in paragraphs 8 and 9 above, and requested the Secretary-General, in consultation with the Special Commission, to develop a plan for the future ongoing monitoring and verification of Iraq's compliance with the paragraph, to be submitted to the Security Council for approval within 120 days of the passage of the resolution (para. 10); invited Iraq to reaffirm unconditionally its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968[10] (para. 11); decided that Iraq should unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapon-usable material or any subsystems or components or any research, development, support or manufacturing facilities related to the above; to submit to the Secretary-General and the Director General of the International Atomic Energy Agency within 15 days of the adoption of the resolution a declaration of the locations, amounts and types of all items specified above; to place all of its nuclear-weapon-usable materials under the exclusive control, for custody and removal, of the Agency, with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General discussed in paragraph 9 (*b*); to accept, in accordance with the arrangements provided for in paragraph 13, urgent on-site inspection and the destruction, removal or rendering harmless as appropriate of all items specified above; and to accept the plan discussed in

paragraph 13 for the future ongoing monitoring and verification of its compliance with these undertakings (para. 12); requested the Director General of the International Atomic Energy Agency, through the Secretary-General and with the assistance and cooperation of the Special Commission as provided for in the plan of the Secretary-General referred to in paragraph 9 (*b*), to carry out immediate on-site inspection of Iraq's nuclear capabilities based on Iraq's declarations and the designation of any additional locations by the Special Commission; to develop a plan for submission to the Security Council within 45 days calling for the destruction, removal or rendering harmless, as appropriate, of all items listed in paragraph 12; to carry out the plan within 45 days following approval by the Council and to develop a plan, taking into account the rights and obligations of Iraq under the Treaty on the Non-Proliferation of Nuclear Weapons, for the future ongoing monitoring and verification of Iraq's compliance with paragraph 12, including an inventory of all nuclear material in Iraq subject to the Agency's verification and inspections, to confirm that Agency safeguards covered all relevant nuclear activities in Iraq, to be submitted to the Council for approval within 120 days of the adoption of the resolution (para. 13); and noted that the actions to be taken by Iraq in paragraphs 8 to 13 above represented steps towards the goal of establishing in the Middle East a zone free from weapons of mass destruction and all missiles for their delivery, and the objective of a global ban on chemical weapons (para. 14).

In pursuance of resolution 687 (1991), on 18 April 1991, the Secretary-General submitted a report to the Security Council[11] in which he indicated his intention to set up the Special Commission envisaged in paragraph 9 (*b*) (i) of the resolution, subject to the approval of the Council, and to make all necessary arrangements for it to begin implementation of its task. The Special Commission (also known as "UNSCOM") would enjoy the relevant privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations.[12] Members of the Special Commission, experts attached to it and other specialists assigned to assist it in the implementation of section C of the resolution would be regarded as experts on mission within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations, relevant annexes to the Convention on the Privileges and Immunities of the Specialized Agencies[13] and article VII of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency,[14] respectively. Taking into account the tasks to be performed by the Special Commission, it might be necessary to conclude special agreements covering the status, facilities, privileges and immunities of the Commission and its personnel. The existing agreements mentioned above would equally apply to tasks to be performed in Iraq by IAEA and could be supplemented by special agreements, should the need arise.

On 19 April, the Security Council informed the Secretary-General that it approved his proposals as contained in the report of 18 April.[15]

On 1 August, pursuant to paragraph 10 of resolution 687 (1991), the Secretary-General submitted to the Security Council a formal "Plan for future ongoing monitoring and verification of Iraq's compliance with rele-

vant parts of section C of Security Council resolution 687 (1991)".[16] On the same day, he transmitted to the Council the IAEA plan for future ongoing monitoring and verification of Iraq's compliance with its undertaking under paragraph 12 of the resolution.[17] The two plans, with certain revisions, were approved by the Security Council in its resolution 715 (1991) of 11 October.[18]

The question of Iraq's failure to comply with its obligations under resolution 687 (1991) (denying an IAEA/UNSCOM nuclear inspection team immediate and unimpeded access to sites designated for inspection by UNSCOM) was further pursued by the Security Council. On 15 August, the Council, determined to ensure full compliance with resolution 687 (1991) and in particular its section C, and acting under Chapter VII of the Charter, adopted resolution 707 (1991),[19] in which it condemned Iraq's serious violation of a number of its obligations under section C of resolution 687 (1991) and of its undertakings to cooperate with the Special Commission and the International Atomic Energy Agency, which constituted a material breach of the relevant provisions of that resolution, which established a cease-fire and provided the conditions essential to the restoration of peace and security in the region; also condemned non-compliance by the Government of Iraq with its obligations under its safeguards agreement with the International Atomic Energy Agency, as established by the Board of Governors of the Agency in its resolution of 18 July 1991 and which constituted a violation of its commitments as a party to the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968; determined that Iraq retained no ownership interest in items to be destroyed, removed or rendered harmless pursuant to paragraph 12 of resolution 687 (1991); and required the Government of Iraq forthwith, to comply fully and without delay with all its international obligations, including those set out in the resolution, in resolution 687 (1991), in the Treaty on the Non-Proliferation of Nuclear Weapons and its safeguards agreement with IAEA.

On 25 October 1991, the Secretary-General transmitted to the Security Council a comprehensive report[20] on UNSCOM's activities during the first six months of its existence, to 24 October, prepared by the Chairman of the Special Commission. The report covered the Commission's operational activities, pursuant to Security Council resolution 687 (1991), related to the elimination of Iraq's weapons of mass destruction and the means of their production as well as to ensuring that the acquisition of such weapons was not resumed in the future. Such activities thus involved the chemical, biological and ballistic missile fields and, in conjunction with IAEA, the nuclear field. An additional report[21] of 4 December 1991 brought up to date that of 25 October.

(iii) *Environmental consequences of military activities*

The grave damage resulting from Iraqi actions during the war in the Persian Gulf, particularly the setting on fire of oil wells and deliberate release of oil into the Gulf, had raised serious concern worldwide. Those concerns had led to a greater focusing of attention on the protection of the

environment in forums both within and outside the framework of the United Nations.

A new item entitled "Exploitation of the environment as a weapon in times of armed conflict and the taking of practical measures to prevent such exploitation" was included in the agenda of the General Assembly. While in the Sixth Committee there was general agreement that the conflict in the Gulf had serious environmental consequences and many States expressed their concerns with regard to that, there were differences of view as to whether existing international law was adequate to cover such actions.

In the context of the same agenda item, it was stressed that there was a need to strengthen the provisions of the Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques of 1977,[22] especially those pertaining to its implementation mechanism.

By its decision 46/417 of 9 December 1991,[23] adopted on the recommendation of the Sixth Committee,[24] the General Assembly took note that the protection of the environment in times of armed conflict was to be addressed at the Twenty-sixth International Conference of the Red Cross and Red Crescent; and decided to request the Secretary-General to report to the General Assembly at its forty-seventh session on activities undertaken in the framework of the International Red Cross with regard to that issue. Furthermore, by its resolution 46/36 A of 6 December 1991,[25] adopted on the recommendation of the First Committee,[26] the General Assembly noted that, as a result of consultations, a majority of States parties to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques had expressed their wish to convene the Second Review Conference of the Parties to the Convention in September 1992 and that, to that end, the Secretary-General of the United Nations, as depositary of the Convention, would hold consultations with the parties to the Convention with regard to questions relating to the Conference and its preparation, including the establishment of a preparatory committee for the Conference. On the same date, the Assembly adopted resolution 46/40,[27] in which it noted with satisfaction an increase in the number of States parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects,[28] urged all States that had not yet done so to exert their best endeavours to become parties to it, and stressed that under article 8 of the Convention, conferences might be convened to consider additional protocols relating to other categories of conventional weapons not covered by the existing annexed Protocols or to review the scope and operation of the Convention.

(iv) *Economic aspects of disarmament*

In 1991, Member States continued to stress the significance of the economic aspects of disarmament, pointing out, among other things, the need to approach to the problems of peace and security in conjunction

with political, economic, social and other elements. In the view of many, the disarmament process must go hand in hand with development, and new financial resources must be allocated to priority civilian areas.

In a study undertaken by the Secretary-General and a group of experts on charting potential uses of resources allocated to military activities for civilian endeavours to protect the environment,[29] the Secretary-General noted that vast political energies had been released by the end of the cold war and that new possibilities had been opened up for a more productive utilization of the world's resources.

By its resolution 46/36 B of 6 December 1991,[30] the General Assembly took note of the above study, and by its resolution 46/36 C of the same date,[31] the Assembly welcomed the report of the Secretary-General on the relationship between disarmament and development[32] and actions undertaken in accordance with the Final Document of the International Conference on the Relationship between Disarmament and Development,[33] and requested him to continue to take action for the implementation of the action programme adopted at that Conference.[34]

(v) *Prevention of an arms race in outer space*

The question of the prevention of an arms race in outer space continued to be a focus of attention within the United Nations. In all forums dealing with the question, concern was expressed about the danger of the militarization of outer space, and the importance and urgency of preventing an arms race in that environment.

By its resolution 46/33 of 6 December 1991,[35] the General Assembly reaffirmed the importance and urgency of preventing an arms race in outer space and readiness of all States to contribute to that common objective, in conformity with the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies;[36] reaffirmed its recognition, as stated in the report of the Ad Hoc Committee on the Prevention of an Arms Race in Outer Space,[37] that the legal regime applicable to outer space by itself did not guarantee the prevention of an arms race in outer space, that that legal 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 strictly to comply with existing agreements, both bilateral and multilateral;[38] called upon all States, in particular those with major space capabilities, to contribute actively to the objective of the peaceful use of outer space and of the prevention of an arms race in outer space and to refrain from actions contrary to that objective and to the relevant existing treaties in the interest of maintaining international peace and security and promoting international cooperation; reiterated that the Conference on Disarmament, as the single multilateral disarmament negotiating forum, had the primary role in the negotiation of a multilateral agreement or agreements, as appropriate, on the prevention of an arms race in outer space; and urged the Union of Soviet Socialist Republics and the United States of America to pursue intensively their bilateral negotiations in a constructive

spirit with a view to reaching early agreement for preventing an arms race in outer space, and to advise the Conference on Disarmament periodically of the progress of their bilateral sessions so as to facilitate its work.

(*b*) Nuclear disarmament

(i) *Nuclear-arms limitation and disarmament*

The question of nuclear-arms limitation and disarmament and the prevention of nuclear war continued to be a focus of attention at both the bilateral and the multilateral level. As a result of decade-long negotiations, the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms (START Treaty), by which radical cuts in the nuclear offensive arms of the two major Powers were envisaged, had been signed[39]. Further unilateral measures undertaken by the United States and the Soviet Union, as announced in their statements of 27 September and 5 October respectively, and continuation of bilateral negotiations marked a new chapter in efforts to reduce and eliminate existing nuclear weapons and to contribute to the elimination of certain grounds for their possible use.

At the 1991 session of the Disarmament Commission, members focused on four concrete elements of nuclear disarmament according to the structure proposed by the Chairman of the Commission.[40] In the Conference on Disarmament, the cessation of the nuclear-arms race and nuclear disarmament and the prevention of nuclear war were considered in plenary meetings devoted to all items, and in more structured and concrete discussion in informal meetings. No substantive progress was made on those items.

Subsequently, the General Assembly adopted, within the two broad areas of the cessation of the nuclear-arms race and the prevention of nuclear war, three traditional resolutions. By its resolution 46/36 D of 6 December 1991,[41] the General Assembly, considering that the prohibition of the production of fissionable material for nuclear weapons and other explosive devices would be an important measure in facilitating the prevention of the proliferation of nuclear weapons and explosive devices, requested the Conference on Disarmament to continue to pursue its consideration of the question of adequately verified cessation and prohibition of the production of fissionable material for nuclear weapons and other nuclear explosive devices and to keep the General Assembly informed of the progress of that consideration. Furthermore, by its resolution 46/37 C of the same date,[42] the Assembly urged the Union of Soviet Socialist Republics and the United States of America, as the two major nuclear-weapon States, to reach agreement on the immediate nuclear-arms freeze, which would, *inter alia*, provide for a simultaneous total stoppage of any production of nuclear weapons and a complete cut-off in the production of fissionable material for weapons purposes; and called upon all nuclear-weapon States to agree, through a joint declaration, to a comprehensive nuclear-arms freeze. Moreover, by its resolution 46/37 D, also of the same date,[43] the Assembly reiterated its request to the Conference on Disarma-

ment to commence negotiations, as a matter of priority, in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances, taking as a basis the draft Convention on the Prohibition of the Use of Nuclear Weapons annexed to the resolution.

(ii) *Treaty on the Reduction and Limitation of Strategic Offensive Arms*

The Treaty between the Union of Soviet Socialist Republics and the United States of America on the Reduction and Limitation of Strategic Offensive Arms (START-I), signed in Moscow on 31 July 1991, represented a milestone in bilateral negotiations on the subject and contributed to equalizing at lower levels the capabilities of the strategic nuclear forces of the two sides.

Throughout the Treaty negotiating period (1982-1991) the General Assembly had addressed the question of bilateral nuclear-arms negotiations and adopted a large number of resolutions on the subject.[44]

By its resolution 46/36 J of 6 December 1991,[45] the General Assembly, affirming that bilateral and multilateral negotiations on disarmament should facilitate and complement each other, welcomed the signing of the Treaty; and recalled the stated intention of the two Governments concerned to intensify, following the signature of the START Treaty, further negotiations on other issues, in particular on preventing an arms race in space and achieving a comprehensive nuclear-test ban.

(iii) *Cessation of all nuclear-test explosions*

Although a number of incremental but noteworthy signs of movement towards further reductions in nuclear explosive testing and an eventual comprehensive test-ban treaty were manifested during 1991, in all, it appeared that there was still a long road to travel to achieve the complete cessation of nuclear-test explosions.

By its resolution 46/29 of 6 December 1991,[46] the General Assembly reaffirmed its conviction that a treaty to achieve the prohibition of all nuclear-test explosions by all States in all environments for all time was a matter of priority which would constitute an essential step in order to prevent the qualitative improvement and development of nuclear weapons and their further proliferation, and which would contribute to the process of nuclear disarmament; urged, therefore, all States to seek to achieve the early discontinuance of all nuclear-test explosions for all time; reaffirmed the particular responsibilities of the Conference on Disarmament in the negotiation of a comprehensive nuclear-test-ban treaty, and in that context urged the re-establishment of the Ad Hoc Committee on a Nuclear Test Ban in 1992 with an appropriate mandate; requested the Conference on Disarmament, in that context, to intensify its substantive work on specific and interrelated test-ban issues, including structure and scope and verification and compliance, taking also into account all relevant proposals and future initiatives; urged the Conference to take into account the

progress achieved by the Ad Hoc Group of Scientific Experts to Consider International Cooperative Measures to Detect and Identify Seismic Events, including the experience gained from the technical test concerning the global exchange and analysis of seismic data, and other relevant initiatives; urged the nuclear-weapon States to agree promptly to appropriate verifiable and military significant interim measures, with a view to concluding a comprehensive nuclear-test-ban treaty; and also urged those nuclear-weapon States which had not yet done so to adhere to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water.[47] Furthermore, by its resolution 46/28 of the same date,[48] the Assembly noted with satisfaction that a substantive session of the Amendment Conference of the States Parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water had been held in New York from 7 to 18 January 1991, and took note of its report;[49] took note as well of the decision adopted by the Amendment Conference to the effect that, since further work needed to be taken on certain aspects of a comprehensive test-ban treaty, especially those with regard to verification of compliance and possible sanctions against non-compliance, the President of the Conference should conduct consultations with a view to achieving progress on those issues and to resuming the work of the Conference at an appropriate time; welcomed the ongoing consultations being conducted by the President of the Amendment Conference and the holding in 1992 of more structured open-ended consultations, as well as the establishment of a group of friends of the President in order to examine various aspects of a comprehensive nuclear-test ban, with a view to resuming the work of the Conference as soon as possible thereafter; called upon all parties to the Treaty to participate in, and to contribute to the success of, the Amendment Conference for the achievement of a comprehensive nuclear-test ban at an early date, as an indispensable measure towards implementation of their undertakings in the preamble to the Treaty; urged all States, especially those nuclear-weapon States which had not yet done so, to adhere to the Treaty; and reiterated its conviction that, pending the conclusion of a comprehensive nuclear-test-ban treaty, the nuclear-weapon States should suspend all nuclear-test explosions through an agreed moratorium or unilateral moratoriums.

(iv) *Non-proliferation of nuclear weapons*

Although the question of the non-proliferation of nuclear weapons was not considered as a separate agenda item in the various deliberative or negotiating bodies dealing with disarmament, it was brought sharply into focus by a number of developments in 1991, both positive and negative. There was an increase in the number of parties to the Treaty on the Non-Proliferation of Nuclear Weapons.[50] France and China, the two nuclear-weapon States not yet parties, stated their intention to accede to it, as did Ukraine and Belarus. At the same time, the war in the Persian Gulf demonstrated the fragility of the non-proliferation regime, especially in regions of conflict such as the Middle East. All those developments, together with the reduction and elimination of some categories of nuclear weapons of the two nuclear Powers and the further arms control measures

that had been announced, could facilitate agreement to extend the Non-Proliferation Treaty beyond 1995 and the solving of such long-standing issues as that of a comprehensive test-ban treaty.

On the question of effective international arrangements to assure non-nuclear weapon States against the use or threat of use of nuclear weapons, no significant progress was made once again in 1991, mainly because of continuing differences of perception as to the real security interests and concerns of the few nuclear-weapon States and the large number of non-nuclear-weapon States.

By its decision 46/413 of 6 December 1991,[51] the General Assembly took note of the intent of the parties to the Treaty on the Non-Proliferation of Nuclear Weapons to form a preparatory committee in 1993 for the conference called for in article X, paragraph 2, of the Treaty, and decided to include in the provisional agenda of its forty-seventh session the item entitled "Treaty of the Non-Proliferation of Nuclear Weapons: 1995 Conference and its Preparatory Committee." Furthermore, by its resolution 46/32 of the same date,[52] the Assembly reaffirmed the urgent need to reach an early agreement on effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons; noted with satisfaction that in the Conference on Disarmament there was no objection, in principle, to the idea of an international convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons; appealed to all States, especially the nuclear-weapon States, to work actively towards an early agreement on a common approach and, in particular, on a common formula that could be included in an international instrument of a legally binding character; and recommended that the Conference on Disarmament should actively continue intensive negotiations with a view to reaching early agreement and concluding effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons, taking into account the widespread support for the conclusion of an international convention and giving consideration to any other proposals designed to secure the same objective.

(v) *Peaceful uses of nuclear energy and the International Atomic Energy Agency safeguards and related activities*

While the promotion of the peaceful uses of nuclear energy and the safeguarding of the non-proliferation regime continued to be recognized as the areas in which IAEA played an indispensable role, the dominant concerns of the international community in 1991 centred on the clandestine activities of Iraq in violation of its international obligations under the Non-Proliferation Treaty and safeguards agreement and on the problem of nuclear safety. In connection with Iraq, the Agency, under a mandate entrusted to it by resolutions of the Security Council, had carried out a number of inspections that disclosed the existence of extensive undeclared and hitherto unknown programmes for the enrichment of uranium and an advanced nuclear-weapon-development programme. Moreover, as a result of the Conference on the Safety of Nuclear Power, held at Vienna in September 1991, there was growing awareness of a need to elaborate a

binding framework convention on nuclear safety, which might mark the beginning of a recognition that some standards and rules in that field should be defined and made mandatory.

By its resolution 46/16 of 13 November 1991,[53] the General Assembly took note of the report of IAEA;[54] urged all States to strive for effective and harmonious international cooperation in carrying out the work of the Agency in the fields of the promotion of the use of nuclear energy, the safety of nuclear installations, technical assistance and safeguards; and also noted with appreciation IAEA's actions concerning Iraq's non-compliance with its non-proliferation obligations, and commended the Agency for its efforts in implementing Security Council resolutions 687 (1991) and 707 (1991).

(vi) *Nuclear-weapon-free zones and zones of peace*

The establishment of nuclear-weapon-free zones and zones of peace in various regions of the world continued to draw support at the forty-sixth session of the General Assembly. In the debate, the establishing of nuclear-weapon-free zones was seen as contributing, in principle, to the prevention of the proliferation of nuclear weapons, to the strengthening of the security of the countries concerned and to confidence-building among them.

Africa

By its resolution 46/34 B of 9 December 1991,[55] the General Assembly, noting South Africa's accession to the Treaty on the Non-Proliferation of Nuclear Weapons on 10 July 1991, reaffirmed that the implementation of the Declaration on the Denuclearization of Africa adopted by the Assembly of Heads of State and Government of the Organization of African Unity in 1964 would be an important measure to prevent the proliferation of nuclear weapons and to promote international peace and security; strongly renewed its call upon all States to consider and respect the continent of Africa and its surrounding areas as a nuclear-weapon-free zone; and requested the Secretary-General (OAU), in consultation with the Organization of African Unity, to take appropriate action to enable the group of experts designated by the United Nations in cooperation with OAU to meet during 1992, in order to complete its work as indicated in paragraph 37 of its report,[56] and to submit the report of the group of experts to the General Assembly at its forty-seventh session. Furthermore, by its resolution 46/34 A of the same date,[57] the Assembly called upon South Africa to comply fully with the implementation of its safeguards agreement with IAEA; also called upon South Africa to disclose all its nuclear installations and materials in conformity with its treaty obligations, and to enhance confidence-building, peace and security in the region; and called upon all States, corporations, institutions and individuals not to engage in collaboration with South Africa that might lead it to violate its commitments under the Treaty on the Non-Proliferation of Nuclear Weapons and its safeguards agreement with the Agency.

Middle East

By its resolution 46/30 of 6 December 1991,[58] the General Assembly urged all parties directly concerned to consider seriously taking the practical and urgent steps required for the implementation of the proposal to establish a nuclear-weapon-free zone in the region of the Middle East in accordance with the relevant resolutions of the General Assembly, and, as a means of promoting that objective, invited the countries concerned to adhere to the Treaty on the Non-Proliferation of Nuclear Weapons; called upon all countries of the region that had not done so, pending the establishment of the zone, to agree to place all their nuclear activities under IAEA safeguards; invited all countries of the region, pending the establishment of a nuclear-weapon-free zone in the region of the Middle East, to declare their support for establishing such a zone, consistent with paragraph 63 (*d*) of the Final Document of the Tenth Special Session of the General Assembly, and to deposit those declarations with the Security Council; also invited those countries, pending the establishment of the zone, not to develop, produce, test or otherwise acquire nuclear weapons or permit the stationing on their territories, or territories under their control, of nuclear weapons or nuclear explosive devices; and invited all parties to consider the appropriate means that might contribute towards the goal of general and complete disarmament and the establishment of a zone free of weapons of mass destruction in the region of the Middle East. Furthermore, by its resolution 46/39 of the same date,[59] the Assembly deplored Israel's refusal to renounce possession of nuclear weapons; and reaffirmed that Israel should promptly apply Security Council resolution 487 (1981), in which the Council, *inter alia*, requested it to place all nuclear facilities under IAEA safeguards and to refrain from attacking or threatening to attack nuclear facilities.

South Asia

By its resolution 46/31 of 6 December 1991,[60] the General Assembly reaffirmed its endorsement, in principle, of the concept of a nuclear-weapon-free zone in South Asia; urged once again the States of South Asia to continue to make all possible efforts to establish a nuclear-weapon-free zone in South Asia and to refrain, in the meantime, from any action contrary to that objective; and called upon the nuclear-weapon States which had not done so to respond positively to that proposal and to extend the necessary cooperation in the efforts to establish a nuclear-weapon-free zone in South Asia.

Latin America and the Caribbean

In the light of the statement made by France that it was prepared to give serious consideration to the ratification of Additional Protocol I of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco),[61] the sponsors of a draft resolution concerning the signature and ratification of that Protocol did not insist that the First Committee take a decision in that connection.

The Indian Ocean as a zone of peace

By its resolution 46/49 of 9 December 1991,[62] the General Assembly reaffirmed full support for the achievement of the objectives of the Declaration of the Indian Ocean as a Zone of Peace;[63] reiterated and emphasized its decision to convene the United Nations Conference on the Indian Ocean at Colombo, as a necessary step for the implementation of the Declaration; noted with satisfaction the preparatory work done by the Ad Hoc Committee in the implementation of the mandate entrusted to it for the convening of the Conference; decided that the Conference should be structured in more than one stage; and also decided to convene the first stage of the Conference at Colombo in 1993, or as soon as possible, in accordance with the resolution and in consultation with the host country.

(*c*) Other weapons and methods of mass destruction

(i) *Chemical weapons*

In 1991, the negotiations on the multilateral convention globally banning chemical weapons witnessed a qualitative change. The war in the Persian Gulf and the possibility that chemical weapons might be used added urgency to the efforts to rid the world of those weapons as soon as possible. With the commitment of the United States, announced in May, to unconditionally destroy its chemical weapons stocks and chemical weapons production facilities and to formally foreswear the use of chemical weapons under any circumstances, including retaliation in kind against any State as of the entry into force of the convention, and with that position shared by the USSR, major obstacles were removed. That made it possible for the Conference on Disarmament to agree to expand the scope of the future convention to include the prohibition of the use of chemical weapons.

By its resolution 46/35 B of 6 December 1991,[64] the General Assembly condemned vigorously all actions that violated, or threatened to violate the obligations assumed under the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare,[65] and other relevant provisions of international law; and welcomed, in that context, recent decisions, declarations and initiatives of the United Nations, and in particular the Security Council, aimed at upholding the authority of the Geneva Protocol and removing the threat of chemical weapons use. Furthermore, by its resolution 46/35 C of the same date,[66] the Assembly renewed its call to all States to observe strictly the principles and objectives of the Geneva Protocol; noted the progress made in the work of the Ad Hoc Committee on Chemical Weapons of the Conference on Disarmament during its 1991 session, and the results recorded in the Committee's report;[67] commended the decision of the Conference on Disarmament to intensify further the negotiations on the complete and effective prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction with the view to striving to achieve a final agreement on a convention by 1992;[68] and called upon all States to consider declaring their intention

to become original States parties to the convention so as to ensure its early entry into force, its effective implementation and its universal character.

(ii) *Third Review Conference of the Parties to the Convention on Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*[69]

Two factors brought the question of the production of bacteriological (biological) weapons into focus in 1991: the Third Review Conference of the Biological Weapons Convention and an increased awareness of the danger of the proliferation of weapons of mass destruction, particularly biological ones.

At the Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, held at Geneva from 9 to 27 September 1991, the States parties succeeded in adopting unanimously a Final Document, including a Final Declaration, in which they reaffirmed the significance of the Convention and undertook obligations under its provisions. The Conference adopted, *inter alia*, two important decisions: one on confidence-building measures and another on verification.

By its resolution 46/35 A of 6 December 1991,[70] the General Assembly noted with satisfaction the adoption by consensus of the Final Declaration;[71] welcomed with satisfaction the results of the Conference; called upon all States parties to the Convention to participate in the implementation of the recommendations of the Conference; and called upon all signatory States that had not ratified or acceded to the Convention to do it without delay, and also called upon those States that had not yet signed the Convention to join the States parties thereto at an early date, thus contributing to the achievement of universal adherence to the Convention.

(iii) *New weapons of mass destruction; radiological weapons*

The question of the prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons received very little attention in the deliberations of the disarmament bodies in 1991, as differences of opinion persisted concerning the imminence of the emergence of such weapons, and no resolution on the subject was adopted by the General Assembly at its forty-sixth session.

The question of the prohibition of radiological weapons continued to be considered in the Conference on Disarmament and in the General Assembly. With respect to the prohibition of radiological weapons in the traditional sense, the Ad Hoc Committee on Radiological Weapons continued to review the draft articles for a convention.

By its resolution 46/36 E of 6 December 1991,[72] the General Assembly recognized that in 1991 the Ad Hoc Committee on Radiological Weapons had made a further contribution to the clarification and better understanding of the different approaches that continued to exist with regard to both of the important matters under consideration; and requested the

Conference on Disarmament to continue its substantive negotiation on the subject with a view to the prompt conclusion of its work, taking into account all proposals presented to the Conference to that end and drawing upon the annexes to the report of the Ad Hoc Committee[73] as a basis of its further work, the result of which should be submitted to the General Assembly at its forty-seventh session.

The issue of the prohibition of the dumping of radioactive waste also continued to figure in the deliberation of the Conference on Disarmament and the General Assembly, but was not a focus of attention. By its resolution 46/36 K of 6 December 1991,[74] on the prohibition of the dumping of radioactive wastes, the General Assembly took note of the part of the report of the Conference on Disarmament relating to a future convention on the prohibition of radiological weapons;[75] requested the Conference on Disarmament to take into account, in the ongoing negotiations for a convention on the prohibition of radiological weapons, radioactive wastes as part of the scope of such a convention; and requested the International Atomic Energy Agency to continue keeping the dumping of radioactive wastes under active review, including the desirability of concluding a legally binding instrument in that field.

(*d*) Conventional disarmament and related issues

(i) *Conventional armaments and advanced technology, and their dissemination*

The trend towards an ever increasing emphasis on conventional aspects of the arms race, armaments and armed conflict in an increasingly technological era clearly continued in 1991. In fact, emphasis on those and closely interrelated issues reached a new level, owing in large part to the crisis and war in the Persian Gulf. Moreover, by the end of the cold war and with the somewhat lessened concern over nuclear weapons, a number of initiatives were put forward concerning transparency in armaments and their transfer, curbing the illicit arms trade and regulating the transfer of technology with possible military applications.

By its resolution 46/36 H of 6 December 1991,[76] the General Assembly expressed its appreciation to the Secretary-General for the study which he had submitted on ways and means of promoting transparency in international transfers of conventional arms;[77] called upon all States to give high priority to eradicating the illicit trade in all kinds of weapons and military equipment, a most disturbing and dangerous phenomenon often associated with terrorism, drug trafficking, organized crime and mercenary and other destabilizing activities, and to take urgent action towards that end, as recommended in the study submitted by the Secretary-General; and invited Member States to provide the Secretary-General with relevant information on their national legislation and/or regulations on arms exports, imports and procurement, and administrative procedures, as regard both authorization of arms transfers and prevention of the illicit arms trade. Furthermore, by its resolution 46/36 L of 9 December 1991,[78]

the Assembly requested the Secretary-General to establish and maintain at United Nations Headquarters in New York a universal and non-discriminatory Register of Conventional Arms, to include data on international arms transfers as well as information provided by Member States on military holdings, procurement through national production and relevant policies in accordance with procedures and input requirements initially comprising those set out in the annex to the resolution; called upon all Member States to provide annually for the Register data on imports and exports of arms in accordance with the established procedures; and requested the Secretary-General, with the assistance of a group of governmental experts to be convened in 1994 on the basis of equitable geographical representation, to prepare a report on the continuing operation of the Register and its further development. Moreover, by its resolution 46/38 D of 6 December 1991,[79] the General Assembly called upon the Disarmament Commission to continue its consideration, within the scope of its agenda, of all relevant aspects of the question of the transfer of high technology with military applications at its 1992 session, with a view to concluding its work on the matter at its 1993 session. In addition, by its resolution 46/40 of the same date,[80] the Assembly noted with satisfaction that an increasing number of States had either signed, ratified, accepted or acceded to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, which had been opened for signature in New York on 10 April 1981;[81] urged all States that had not yet done so to exert their best endeavours to become parties to the Convention and the Protocols annexed thereto as early as possible, so as ultimately to obtain universality of adherence; stressed that, under article 8 of the Convention, conferences might be convened to consider amendments to the Convention or any of the annexed Protocols, to consider additional protocols relating to other categories of conventional weapons not covered by the existing annexed Protocols or to review the scope and operation of the Convention and the annexed Protocols and to consider any proposal for amendments to the Convention or to the existing Protocols and any proposals for additional protocols relating to other categories of conventional weapons not covered by the existing Protocols; and noted, taking into account the nature of the Convention, the potential of the International Committee of the Red Cross to consider questions pursuant to the Convention.

(ii) *Regional disarmament and confidence- and security-building measures*

In 1991, Member States of all regions of the world expressed their conviction that the regional approach to conventional disarmament was working and that it complemented the global approach.

Encouraging steps were taken in 1991 in various parts of the world to lessen tension and resolve conflicts, most notably in Cambodia and in Central America. The measures envisaged involved the drawing up of inventories of weapons and, in the case of Cambodia, demobilization and arms control and reduction with respect to the Cambodian parties.

The increasing emphasis on regional disarmament was also reflected in considerable activity under United Nations auspices in 1991. The General Assembly adopted five resolutions and one decision on various aspects of the subject area, including confidence-building measures.

By its resolution 46/36 F of 6 December 1991,[82] the General Assembly reaffirmed that the regional approach to disarmament was one of the essential elements in the global process of disarmament; pronounced itself convinced of the importance and effectiveness of regional disarmament measures taken at the initiative of States of the region and with the participation of all States concerned and taking into account the specific characteristics of each region, in that they could contribute to the security and stability of all States, in accordance with the principles of the Charter of the United Nations and in compliance with international law and existing treaties; affirmed that regional and subregional agreements on arms control and disarmament could contribute to the peaceful settlement of disputes and conflicts; recognized the useful role played by the regional centres of the United Nations; encouraged States of the same region to examine the possibility of creating, on their own initiative, regional mechanisms and/or institutions for the establishment of measures in the framework of an effort of regional disarmament or for the prevention and the peaceful settlement of disputes and conflicts with the assistance, if requested, of the United Nations; and invited and encouraged all States to conclude, whenever possible, agreements on disarmament and confidence-building measures at the regional level. Furthermore, by its resolution 46/36 G of the same date,[83] the Assembly welcomed the determination of the States signatories of the Treaty on Conventional Armed Forces in Europe[84] fully to implement its provisions and the determination of all the States participating in the Conference on Security and Cooperation in Europe fully to implement the provisions of the Vienna Document of the negotiations on confidence- and security-building measures,[85] as well as the decision of those States to continue negotiations in those fields. Moreover, by its resolution 46/36 I, also of the same date,[86] the Assembly called upon States to conclude agreements, whenever possible, for nuclear non-proliferation, disarmament and confidence-building measures at regional and subregional levels. And by its resolution 46/37 B of the same date,[87] the Assembly supported and encouraged efforts aimed at promoting confidence-building measures at regional and subregional levels in order to ease regional tensions and to further disarmament and non-proliferation measures at regional and subregional levels in Central Africa. In addition, by its resolution 46/25 of the same date,[88] the Assembly called upon all Member States to participate in the United Nations system for the standardized reporting of military expenditures as adopted by the General Assembly;[89] and encouraged the Disarmament Commission to finalize its work on objective information on military matters in 1992.

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2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Membership in the United Nations

In 1991, the following States were admitted to membership in the United Nations:

States	*General Assembly resolution*	*Date of adoption*
Democratic People's Republic of Korea	46/1	17 September 1991
Estonia	46/4	17 September 1991
Latvia	46/5	17 September 1991
Lithuania	46/6	17 September 1991
Marshall Islands	46/3	17 September 1991
Micronesia (Federated States of)	46/2	17 September 1991
Republic of Korea	46/1	17 September 1991

By the end of 1991, 166 States had become Members of the United Nations.[90]

(*b*) Implementation of the Declaration on the Strengthening of International Security[91]

In its decision 46/414 of 6 December 1991,[92] adopted on the recommendation of the First Committee,[93] the General Assembly reaffirmed the Declaration on the Strengthening of International Security and invited Member States to provide their views on the implementation of the Declaration.

(*c*) Legal aspects of the peaceful uses of outer space

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its thirtieth session at United Nations Headquarters in New York from 25 March to 12 April 1991.[94]

In continuing its consideration of the agenda item entitled "The elaboration of draft principles relevant to the use of nuclear power sources in outer space, with the aim of finalizing the draft set of principles", the Subcommittee re-established its Working Group on the item. The Subcommittee continued to consider that item through its Working Group, having before it a working paper submitted at its previous session by the delegation of Canada,[95] a working paper submitted to the Committee at its thirty-third session by the delegations of Canada and Germany,[96] a working paper submitted to the Subcommittee at its current session by the delegations of Canada, France, Germany and Sweden[97] and a working paper submitted to the Subcommittee at its current session by the delegations of Canada, China, Czechoslovakia, France, Germany, Italy, the Netherlands, Sweden and the United Kingdom.[98]

The Subcommittee also re-established its Working Group on the agenda item "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union". The Subcommittee had before it working papers submitted at its previous sessions. The Working Group considered the two aspects of the agenda item, namely, the definition and delimitation of outer space, on the one hand, and the geostationary orbit, on the other, separately.

The Subcommittee re-established as well its Working Group on the item "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries". The Subcommittee had before it the replies[99] received from States Members of the United Nations containing their views as to the priority of specific subjects under that particular agenda item and providing information on their national legal frameworks relating to the development of the application of the principle contained in article I of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.[100] The Subcommittee also had before it the replies received[101] from States Members of the United Nations containing their views on the subject of international agreements that Member States had entered into that were relevant to the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of all countries, taking into particular account the needs of developing countries. The Working Group, after discussion, requested its Chairman to prepare, for the next session of the Subcommittee, a paper summarizing in an analytical manner the views and information contained in the above-mentioned responses of Member States.

The Committee on the Peaceful Uses of Outer Space at its thirty-fourth session, held at Graz, Austria, from 27 May to 6 June 1991, took note with appreciation of the report of the Legal Subcommittee on the work of its thirtieth session and made recommendations concerning the agenda of the subcommittee at its thirty-first session.[102]

With regard to the item entitled "The elaboration of the draft principles relevant to the use of nuclear power sources in outer space", the Committee, noting that the delegations of Canada and Germany had submitted a revised version of their working paper,[103] expressed the hope that it could constitute a solid basis for consensus at the next session of the Legal Subcommittee.

Regarding the agenda of the Legal Subcommittee, the Committee recommended that the Subcommittee at its thirty-first session should continue the work on its current agenda items.

The Committee also considered, in accordance with paragraph 27 of General Assembly resolution 45/72 of 11 December 1990, the item entitled "Spin-off benefits of space technology: review of current status". The

Committee noted with appreciation the study prepared at its request by the Outer Space Affairs Division on spin-off benefits of space technology[104] and took note of the working paper on the subject submitted by the USSR.[105] The Committee agreed that there was a need to examine ways to strengthen and enhance international cooperation in the field of spin-off benefits of space technology through, *inter alia*, improved means of providing access to spin-offs for all countries, giving particular attention to those spin-offs which could address the social and economic needs of developing countries.

Consideration by the General Assembly

At its forty-sixth session, by its resolution 46/45[106] of 9 December 1991, adopted on the recommendation of the Special Political Committee,[107] the General Assembly endorsed the report of the Committee on the Peaceful Uses of Outer Space; invited States that had not yet become parties to the international treaties governing the uses of outer space[108] to give consideration to ratifying or acceding to those treaties; and endorsed the recommendations of the Committee that the Legal Subcommittee, at its thirty-first session, taking into account the concerns of all countries, particularly those of developing countries, should continue, through its working groups: (*a*) the elaboration of draft principles relevant to the use of nuclear power sources in outer space with the aim of finalizing the draft set of principles at its next session; (*b*) its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of ITU; and (*c*) its consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries. The Assembly also requested the Committee to continue to consider, at its thirty-fifth session, its agenda item entitled "Spin-off benefits of space technology: review of current status".

(*d*) Question of Antarctica

By its resolution 46/41 A of 6 December 1991,[109] adopted on the recommendation of the First Committee,[110] the General Assembly took note of the report of the Secretary-General on a United Nations-sponsored station in Antarctica[111] and decided to keep the matter under review; took note also of the Secretary-General's report on the state of the environment in Antarctica[112] and requested him to monitor and gather information on the subject and to submit an annual report to the General Assembly; expressed its regret that, despite the numerous resolutions adopted by the General Assembly, the Secretary-General or his representative had not been invited to the meetings of the Antarctic Treaty Consultative Parties; reiterated its call upon the Consultative Parties to deposit information and documents covering all aspects of Antarctica with the Secretary-General of the United Nations, and requested the Secretary-General to submit a report on his evaluation thereof to the

General Assembly at its forty-seventh session expressed its disappointment, while welcoming the signing on 4 October 1991 at Madrid of the Protocol on Environmental Protection to the Antarctic Treaty[113] by the Antarctic Treaty parties, that the Protocol had not been negotiated with the full participation of the international community; expressed its concern that the Madrid Protocol lacked the monitoring and implementation mechanisms to comply with the provisions of the Protocol and had not taken into consideration the call of the international community to ban permanently prospecting and mining in Antarctica; and underlined its call that any move at drawing up an international convention to establish a nature reserve or world park in Antarctica and its dependent and associated ecosystems must be negotiated with the full participation of the international community. Furthermore, by its resolution 46/41 B of the same date,[114] adopted also on the recommendation of the First Committee,[115] the General Assembly appealed once again to the Antarctic Treaty Consultative Parties to take urgent measures to exclude the apartheid minority regime from participation in their meetings at the earliest possible date until such time that the abhorrent system and practices of apartheid minority domination were totally eliminated in South Africa.

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3. ENVIRONMENTAL, ECONOMIC, SOCIAL, HUMANITARIAN AND CULTURAL QUESTIONS

(*a*) Environmental questions

Sixteenth session of the Governing Council of the United Nations Environment Programme[116]

The sixteenth session of the Governing Council of the United Nations Environment Programme was held at UNEP headquarters, Nairobi, from 20 to 31 May 1991.

By its decision of 16/15 B[117] entitled "The 1991 state-of-the-environment report, 'The state of the world environment 1991' ", the Governing Council requested the Executive Director within the environment programme to continue to accord high priority to the negotiation of a convention on biological diversity.

By its decision 16/25, entitled "Strengthening of three main secretariat units through the establishment of programme activity centres", the Council, noting the progress made in the implementation of decision 10/21 of 31 May 1982, in which the Council had endorsed the Montevideo Programme for the Development and Periodic Review of Environmental Law, and of subsequent decisions in the field of environmental law, decided to give the Global Resource Information Database, the Industry and Environment Office and the Environmental Law and Institutions Unit a greater degree of autonomy in fulfilling their functions by establishing them as programme activity centres within the Office of the Environment Programme, with the priorities and long-term goals with regard to (*a*) pro-

motion and implementation of global legal environmental instruments, (*b*) formulation and implementation of national environmental legislation and establishment or support of appropriate institutions and (*c*) information exchange, as set out in the annex to the decision; called upon Governments and international organizations concerned to cooperate and support the development and application of international environmental law, assistance to developing countries through the provision of technical assistance to develop national environmental legislation, institution building, and support of education and information programmes regarding environmental law; and called upon the United Nations organizations and bodies and intergovernmental organizations outside the United Nations system, as well as non-governmental organizations active in the field of environmental law, to cooperate fully with the United Nations Environment Programme in the implementation of its programme.

By its decision 16/30 A, entitled "Hazardous waste: Environmentally sound management of hazardous waste", the Council requested the Executive Director to prepare, through the interim secretariat for the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal[118] and in cooperation with the UNCED secretariat, FAO, ILO, WHO, UNIDO, the Organisation for Economic Cooperation and Development (OECD), the European Economic Community (EEC) and other relevant organizations, draft elements of an international strategy and an action programme; further requested the Executive Director to convene, in cooperation with other organizations as appropriate, an ad hoc meeting of government-designated experts to consider the draft elements and a possible international strategy and action programme; urged Governments that had not yet acceded to or ratified the Basel Convention to do so as soon as possible; and requested the Executive Director to continue to support the efforts of African Governments with regard to the entry into force and implementation of the 1991 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.[119]

By its decision 16/40, entitled "Protection of the ozone layer", the Council urged States that had not done so to ratify, accept or approve the 1987 Montreal Protocol on Substances That Deplete the Ozone Layer[120] and the 1990 Amendment to the Montreal Protocol adopted by the Second Meeting of the Parties;[121] and urged the parties to the 1985 Vienna Convention for the Protection of the Ozone Layer[122] and the Montreal Protocol that had not yet done so to pay their contributions to the Trust Fund for the Vienna Convention and the Trust Fund for the Montreal Protocol to enable the Ozone Secretariat to implement the decisions of the parties.

By its decision 16/41, entitled "Climate change", in part II, "Intergovernmental Negotiating Committee for a Framework Convention on Climate Change", the Council urged States, acting individually or in groups, as well as through UNEP and other United Nations bodies or other institutions, to support the negotiating process aimed at the protection of the global climate for present and future generations of humanity.

By its decision 16/42, entitled "Preparation of an international legal instrument on biological diversity", the Council decided to rename the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity the "Intergovernmental Negotiating Committee for a Convention on Biological Diversity"; and affirmed that the change of name did not mean a new negotiating body or affect the continuity of the process of elaborating the convention. And by its decision 16/43, entitled "International conventions and protocols in the field of the environment", the Council took note of the report of the Executive Director on international conventions and protocols in the field of the environment;[123] requested the Executive Director to make the report and the Register of International Treaties and Other Agreements in the Field of the Environment[124] available to the Preparatory Committee for the United Nations Conference on Environment and Development at its third session; called upon the Executive Director, in furtherance of the objectives of the Preparatory Committee for UNCED, to cooperate fully in reviewing the effectiveness of existing international conventions and protocols in the field of the environment; and urged those States that had not already done so to sign, ratify, accede to and implement relevant conventions in the field of the environment.

Pursuant to the request contained in section II, paragraph 9, of General Assembly resolution 44/228 of 22 December 1989, the Governing Council adopted a number of other decisions of relevance to the preparatory process for UNCED.

Session of the Preparatory Committee for the United Nations Conference on Environment and Development[125]

The second and third sessions of the Preparatory Committee for UNCED were held at the United Nations Office at Geneva, from 18 March to 5 April and from 12 August to 4 September 1991, respectively.

Decisions adopted by the Committee[126] included decisions related to legal matters. In particular, by its decision 2/3, entitled "Establishment of Working Group III on legal, institutional and all related matters", the Committee decided to establish an open-ended Working Group III to assist the Preparatory Committee in dealing with legal, institutional and all related matters in full conformity with the terms of General Assembly resolution 44/228 of 22 December 1989, and that that Working Group would (i) prepare an annotated list of existing international agreements and international legal instruments in the environmental field; (ii) examine the feasibility of elaborating principles on general rights and obligations of States and regional economic integration organizations, as appropriate, in the field of environment and development, and consider the feasibility of incorporating such principles in an appropriate instrument/charter/statement/declaration, taking due account of the conclusions of all the regional preparatory conferences; (iii) consider the legal and institutional issues referred to it by Working Groups I and II as well as the plenary of the Preparatory Committee; (iv) review ways and means of strengthening the cooperation and coordination between the United Nations system and

other intergovernmental and non-governmental, regional and global institutions in the field of environment and development; (v) review the role and functioning of the United Nations system in the field of environment and development and make relevant recommendations; and (vi) examine and consider strengthening institutional arrangements required for the effective implementation of the conclusions of UNCED in the United Nations system. By its decision 2/8, entitled "Climate change", the Committee took note of the establishment by General Assembly resolution 45/212 of 21 December 1990 of a single intergovernmental negotiating process for preparation by an Intergovernmental Negotiating Committee of an effective framework convention on climate change and took note of the relationships between the Intergovernmental Negotiating Committee and UNCED as defined by General Assembly resolutions 45/211 and 45/212 of 21 December 1990; and by its decision 3/13 A entitled "Protection of the atmosphere: Climate change", the Committee took note of the report of the Secretary-General of the Conference on protection of the atmosphere: climate change,[127] concerning the ongoing processes related to climate change, and requested the Secretary-General of the Conference to continue to follow those processes in order to ensure that relevant results were reflected in the work of the Preparatory Committee. By its decision 2/9, entitled "Biological diversity", the Committee took note of the progress report of the Secretary-General of UNCED on the conservation of biological diversity.[128] It requested the Secretary-General of UNCED to collaborate closely with UNEP and to transmit a copy of the progress report and the decision of the Preparatory Committee at its second session on the issue to the Chairman and the secretariat of the negotiations on a convention on biological diversity. And by its decision 3/18, entitled "Conservation of biological diversity: options for Agenda 21", the Preparatory Committee of UNCED, having regard to the report of the Secretary-General of the Conference on conservation of biological diversity[129] and on the options for Agenda 21,[130] as well as the oral report by the Chairman of the Intergovernmental Negotiating Committee for a Convention on Biological Diversity regarding progress of the negotiations, requested the Secretary-General of the Conference to transmit the Chairman's Summary and Proposals for Action,[131] suitably represented as an amendment to document A/CONF.151/PC/42/Add.4, to the Negotiating Committee; and also requested the Secretary-General of the Conference to follow the work of the Negotiating Committee and to keep it informed of the interconnections between relevant aspects of biological diversity and other environment and development issues as they emerged from the process of the Conference, in particular in the elaboration in Agenda 21.

By its decision 2/20, entitled "Protection of the quality and supply of freshwater resources: application of integrated approaches to the development, management and use of water resources", the Preparatory Committee requested the Secretary-General of the Conference to prepare for its third session a report on progress achieved in the preparation for the International Conference on Water and the Environment, to be held at Dublin in January 1992. In preparing his report, the Secretary-General of UNCED should take into account, *inter alia*, the need to take into account

the work of the International Law Commission of the United Nations in developing legal instruments for the management of transboundary water resources and related water supply and water quality issues, particularly in international rivers and lakes, and in that connection the Preparatory Committee referred the question of the definition of legal principles for the protection, national use and development of transboundary rivers and lakes to Working Group III and requested the Secretary-General of the Conference to report on progress achieved by the ILC. And by its decision 3/27, entitled "Legal instruments for transboundary waters", the Committee, having taken note of the progress report of the Secretary-General on the development of legal instruments for transboundary waters,[132] and in view of the need to take into account further progress on the matter in the International Law Commission and in the United Nations Economic Commission for Europe (ECE), as well as the results of the International Conference on Water and the Environment, decided to consider the matter at the fourth session of Working Group III.

By its decision 3/25, entitled "Survey of existing agreements and instruments, and criteria for evaluation", the Preparatory Committee took note of the report of the Secretariat on the survey of existing agreements and instruments, and criteria for evaluation;[133] and requested the Secretary-General of UNCED to compile the necessary background information in accordance with the proposed criteria for evaluating the effectiveness of existing agreements and instruments, on the basis of a revised list of such agreements and instruments and in cooperation with international secretariats or depositaries concerned, as applicable. By its decision 3/26, entitled "Principles on general rights and obligations", the Preparatory Committee took note of document A/CONF.151/PC/78 (note by the Secretariat on an annotated check-list of principles of general rights and obligations) and documents submitted by delegations,[134] and decided to take as a basis for the discussion at the fourth session of the Preparatory Commission the ideas and proposals contained in those documents, in combination with the proposals from delegations contained in A/CONF.151/PC/WG.III/L.8 and Add.1 (the Chairman's consolidated draft), without prejudice to further contributions or proposals to be submitted by national delegations or regional groups after the third session of the Preparatory Committee. And by its decision 3/28, entitled "Environmental disputes: prevention and settlement", the Preparatory Committee, recalling General Assembly resolution 44/228 of 22 December 1989 on UNCED and in particular subparagraph 15 (*w*), under which the Conference should assess the capacity of the United Nations system to assist in the prevention and the settlement of disputes in the environmental sphere and to recommend measures in that field, while respecting existing bilateral and multilateral agreements that provided for the settlement of such disputes, bearing in mind the interrelationship of environmental policies, development strategies and peaceful cooperation to achieve global sustainable development, recalling principle 21 of the Declaration of the United Nations Conference on Human Environment, held at Stockholm in June 1972, and taking note of the proposals (submitted by Austria) contained in documents A/CONF.151/PC/L.29 and A/CONF.151/PC/WG.III/L.1, decided to devote one or two sessions of Working Group III

at the fourth session of the Preparatory Committee to subparagraph 15 (*w*) of resolution 44/228; and requested the secretariat, in evaluation of international agreements in preparation for the fourth session of the Preparatory Committee to give special attention to the mandate of subparagraph 15 (*w*) of the above mentioned General Assembly resolution.

Consideration by the General Assembly

At its forty-sixth session the General Assembly, by its resolution 46/168 of 19 December 1991,[135] adopted on the recommendation of the Second Committee,[136] reaffirmed its resolution 44/228 of 22 December 1989, on the United Nations Conference on Environment and Development, and called for its full implementation; and took note of the reports of the Preparatory Committee on its second[137] and third[138] sessions and endorsed the decisions contained therein.

Furthermore, by its resolution 46/169 of the same date,[139] adopted also on the recommendation of the Second Committee,[140] the General Assembly noted with appreciation the work of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change at its first, second and third sessions;[141] and urged the Negotiating Committee to expedite and successfully complete the negotiations as soon as possible and to adopt the framework convention on climate change, containing appropriate commitments and any related legal instruments as might be agreed upon, in time for it to be opened for signature during UNCED. Moreover, by its decision 46/463 of 20 December 1991,[142] also adopted on the recommendation of the Second Committee,[143] the General Assembly took note of the following reports of the Secretary-General: (*a*) on possible adverse effects of the sea level rise on islands and coastal areas, particularly low-lying coastal areas;[144] (*b*) on traffic in and disposal, control and transboundary movements of toxic and dangerous products and wastes;[145] (*c*) on implementation of General Assembly resolution 44/227;[146] (*d*) on large-scale pelagic drift-net fishing and its impact on the living marine resources of the world's oceans and seas;[147] and the note on international conventions and protocols in the field of the environment.[148]

(*b*) International code of conduct on the transfer of technology

By its resolution 46/214 of 20 December 1991,[149] adopted on the recommendation of the Second Committee,[150] the General Assembly took note of the report of the Secretary-General of the United Nations Conference on Trade and Development on the consultations carried out in 1991 on an international code of conduct on the transfer of technology.[151]

(*c*) Office of the United Nations High Commissioner for Refugees[152]

During the reporting period the global refugee situation deteriorated in an unprecedented manner, owing particularly to developments in the Middle East region and in Africa (the Horn and western Africa). That

troubling evaluation of events had put the humanitarian machinery of the United Nations system and the international community to the test and might have far-reaching implications for the manner in which international assistance was channelled towards emergencies, both man-made and natural. Previous calls for enhanced inter-agency coordination and improvements in resource allocation had assumed greater significance and urgency and gave particular relevance to Economic and Social Council resolution 1990/78 of 27 July 1990.

International protection involved using law and principles to secure the rights, security and welfare of refugees. Beyond attaining immediate objectives, such as the prevention of *refoulement*, the ultimate aim of protection was to achieve durable solutions to the problems of refugees, either through voluntary repatriation to their countries of origin in conditions of safety, or through integration in new national communities. Reassessment of how those goals could be achieved remained an urgent need. The forty-first session of the Executive Committee of the High Commissioner's Programme had noted the urgency of the deliberations of its Working Group on Solutions and Protection. Beginning in the autumn of 1990 the Working Group has met regularly analysing the causes of refugee flows, protection problems, possible responses and solutions—including prevention—relating to the seven categories of persons it decided to discuss within the framework of the exercise, that is, those covered by the 1951 Convention relating to the Status of Refugees[153] and its 1967 Protocol;[154] those covered by the Organization of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa[155] and the Cartagena Declaration on Refugees;[156] those forced to leave, or prevented from returning to their countries because of man-made disasters; those forced to leave or prevented from returning because of natural or ecological disasters or extreme poverty; rejected asylum-seekers; the internally displaced; and stateless persons. Throughout discussions in the Working Group, the perspective of UNHCR had been that it was necessary to adopt a global, solution-oriented approach to population movements containing asylum-seekers, which integrated and properly balanced humanitarian and human rights concerns with development, foreign policy and immigration-control considerations. It was clear from the proceedings that the concept of international protection covered a broad range of activities.

Those included providing for the protection of refugees by promoting with Governments international conventions and special agreements intended to improve the situations of refugees and assisting in efforts to implement durable solutions to their problems.

With Belize acceding on 25 September 1990 to the 1951 Convention relating to the Status of Refugees and its Protocol, the number of States parties to one or both of those instruments was, by the end of the reporting period, 107.

Promotion and dissemination of refugee law had also retained its place as an essential protection function of UNHCR in order to safeguard the human rights of refugees and asylum-seekers. During the period under

review, 20 refugee law training seminars for Government officials and others were organized in all parts of the world. Moreover, the Centre for Documentation on Refugees continued to strengthen and systematize the Office's information and documentation capacity. In that connection, further progress had been realized in the development of its databases, REFLIT, REFCAS, REFINT and REFLEG. Those databases contained, respectively, abstracts of public documents concerning refugees and of legal decisions on refugees status, the full texts of international instruments and of national legislation. In addition to its quarterly bulletin, *Refugee Abstracts*, the Centre had published a special bibliography, *EXOM in abstracts*, on the occasion of the fortieth anniversary of UNHCR, which described all major documents issued in the context of UNHCR governing bodies since its creation. In the framework of the International Refugee Documentation Network, the Centre had set up an *International Refugee Electronic Network* (IRENE). Finally, the *International Thesaurus of Refugee Terminology*, published in English in 1989, was now being issued in French and Spanish.

At the forty-second session of the Executive Committee of the Programme of the High Commissioner for Refugees, held at Geneva from 7 to 11 October 1991,[157] the Committee commended the High Commissioner for the Guidelines on the Protection of Refugee Women[158] and requested that they be made an integral part of all UNHCR protection and assistance activities; reaffirmed Conclusion No. 59 (XL) on refugee children adopted at the fortieth session of the Executive Committee; welcomed the recent accessions by Romania and Poland to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and appealed to States which had not yet acceded to those instruments to do so, thereby promoting international burden-sharing and facilitating the handling and resolution of refugee situations; noted with appreciation the efforts of the High Commissioner to promote refugee law and called upon the High Commissioner to strengthen the Office's training activities, in particular through training courses directed to Government officials and others working directly with refugees and asylum-seekers; welcomed the convening of the World Conference on Human Rights and called upon the High Commissioner to participate actively in the preparations for and the proceedings of the Conference, bearing in mind particularly that the matter of human rights and mass exoduses merited further serious consideration; accepted with appreciation the report of the Working Group on Solutions and Protection to the forty-second session of the Executive Committee of the High Commissioner's Programme;[159] reaffirmed the link between international protection and resettlement as an instrument of protection and its important role as a durable solution in specific circumstances; welcomed the development of a comprehensive set of Guidelines on the Protection of Refugee Women and stressed the ongoing need to implement and monitor the effectiveness of the Policy on Refugee Women[160] and the Guidelines on the Protection of Refugee Women; reiterated its invitation to Governments, other United Nations bodies, especially UNICEF, intergovernmental and non-governmental organizations and refugees themselves to work with UNHCR in the implementation of the Guidelines on Refugee Children;[161] invited UNHCR to adopt the Guidelines on Refugee Children

and the Guidelines on the Protection of Refugee Women as tools to be used by field offices in their training and their programmes and budget planning process and suggested that UNHCR make active use of those Guidelines in planning and executing any refugee emergency operation.

Consideration by the General Assembly

By its resolution 46/106 of 16 December 1991,[162] adopted on the recommendation of the Third Committee,[163] the General Assembly strongly reaffirmed the fundamental nature of the function of the Office of the United Nations High Commissioner for Refugees to provide international protection and the need for States to cooperate fully with the Office in fulfilling that function, in particular by acceding to and fully and effectively implementing the relevant international and regional refugee instruments; endorsed the conclusion on refugee children adopted by the Executive Committee of the Programme of the High Commissioner at its forty-second session,[164] including the decision to establish a new post of coordinator for refugee children within the Office of the High Commissioner; commended the High Commissioner on the Guidelines on the Protection of Refugee Women;[165] welcomed the initiatives taken by the High Commissioner to enhance the capacity of the Office to respond to emergencies and, taking into account current deliberations on a United Nations system-wide response, encouraged the High Commissioner to continue to work closely with other United Nations agencies, as well as other organizations, whether governmental, intergovernmental or non-governmental, to assure a coordinated and effective response to emergency humanitarian situations of a complex and protracted nature, and called upon Governments to assist in implementing those initiatives.

(*d*) International drug control

Status of international instruments

In the course of 1991, four more States became parties to the 1961 Single Convention on Narcotic Drugs,[166] three more States became parties to the 1971 Convention on Psychotropic Substances,[167] two more States became parties to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,[168] four more States became parties to the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961,[169] and 23 more States became parties to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[170]

Consideration by the General Assembly

By its resolution 46/101 of 16 December 1991,[171] adopted on the recommendation of the Third Committee,[172] the General Assembly reaffirmed that the fight against drug abuse and illicit trafficking should continue to be based on strict respect for the principles enshrined in the Charter of the United Nations and international law, particularly respect

for the sovereignty and territorial integrity of States, non-interference in the internal affairs of States, and non-use of force or the threat of force in international relations; and affirmed that the international fight against drug trafficking should not in any way justify violation of the principles enshrined in the Charter and international law, particularly the right of all peoples freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and that every State had the duty to respect that right in accordance with the provisions of the Charter.

By its resolution 46/102 of the same date,[173] adopted also on the recommendation of the Third Committee,[174] the General Assembly reaffirmed the commitment expressed in the Global Programme of Action adopted by the General Assembly at its seventeenth special session on 23 February 1990[175] and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control,[176] as adopted by the International Conference on Drug Abuse and Illicit Trafficking; and called upon States to take all possible steps to promote and implement individually and in cooperation with other States the mandates and recommendations contained in the Global Programme of Action.

Furthermore, by its resolution 46/103 of the same date,[177] adopted also on the recommendation of the Third Committee,[178] the General Assembly urged Governments and organizations to adhere to the principles set forth in the Declaration adopted by the International Conference on Drug Abuse and Illicit Trafficking[179] and the Political Declaration adopted by the General Assembly at its seventeenth special session,[180] and to implement the recommendations contained in the above-mentioned Comprehensive Multidisciplinary Outline and in the Global Programme of Action; welcomed the trend towards ratification and implementation of the Single Convention on Narcotic Drugs of 1961, that Convention as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; and commended the International Narcotics Control Board for its valuable work in monitoring production and distribution of narcotic drugs and psychotropic substances so as to limit their use to medical and scientific purposes, and for implementing its additional responsibilities under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Finally, by its resolution 46/104 of the same date,[181] adopted also on the recommendation of the Third Committee,[182] the General Assembly took note with appreciation of the report of the Secretary-General on the measures taken to implement Assembly resolution 45/179 of 21 December 1990 on the enhancement of the United Nations structure for drug abuse control;[183] welcomed the integration of the structures and functions of the Division of Narcotic Drugs, the secretariat of the International Narcotics Control Board and the United Nations Fund for Drug Abuse Control into a single international drug control programme based in Vienna; and emphasized the need for the Executive Director of the United Nations International Drug Control Programme to have the necessary degree of managerial flexibility to discharge effectively and expeditiously the functions of the

Programme under the terms of the United Nations treaties and resolutions relating to international drug control, while recognizing that the Programme was now a part of the United Nations Secretariat.

(*e*) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*

In 1991, seven more States became parties to the International Covenant on Economic, Social and Cultural Rights,[184] eight more States became parties to the International Covenant on Civil and Political Rights[185] and eight more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights.[186] On 11 July 1991, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty of 1989,[187] entered into force, and as of the end of the year, 10 States had become parties to that Protocol.

By its resolution 46/113 of 17 December 1991,[188] adopted on the recommendation of the Third Committee,[189] the General Assembly took note with appreciation of the report of the Human Rights Committee on its fortieth, forty-first and forty-second sessions;[190] also took note with appreciation of the report of the Committee on Economic, Social and Cultural Rights on its fifth session,[191] including its suggestions and recommendations; urged States parties to the International Covenants on Human Rights to pay active attention to the protection and promotion of civil and political rights, as well as economic, social and cultural rights, taking into consideration their indivisible and interrelated character and the fact that the promotion and protection of one category of rights should never exempt or excuse States from the promotion and protection of the other rights; again urged all States that had not yet done so to become parties to the International Covenants on Human Rights and to consider acceding to the Optional Protocols to the International Covenant on Civil and Political Rights; invited the States parties to the International Covenant on Civil and Political Rights to consider making the declaration provided for in article 41 of the Covenant; stressed the importance of avoiding the erosion of human rights by derogation, and underlined the necessity of strict observance of the agreed conditions and procedures for derogation under article 4 of the International Covenant on Civil and Political Rights, bearing in mind the need for States parties to provide the fullest possible information during states of emergency, so that the justification for and appropriateness of measures taken in those circumstances could be assessed; appealed to States parties to the Covenants that had exercised their sovereign right to make reservations in accordance with relevant rules of international law to consider whether any such reservations should be reviewed; again urged the Secretary-General, taking into account the suggestions of the Human Rights Committee, to take determined steps to give more publicity to the work of that Committee and, similarly, to the work of the Committee on Economic, Social and Cultural Rights; and encouraged all Governments to publish the texts of the International Covenants on Human Rights and the

Optional Protocols to the International Covenant on Civil and Political Rights in as many languages as possible and to distribute them and make them known as widely as possible on their territories.

Moreover, by its resolution 46/81 of 16 December 1991,[192] the General Assembly, recalling, on the occasion of the twenty-fifth anniversary of the adoption of the International Covenants on Human Rights, the fundamental importance and special status of those basic human rights instruments of the United Nations, and reaffirming the importance of the observance and effective implementation of the universally recognized standards in the field of human rights as contained in the Covenants, solemnly declared that the acceptance of the Covenants contributed greatly to the protection of human rights and fundamental freedoms.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination*[193]

In 1991, two more States became parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

By its resolution 46/83 of 16 December 1991,[194] adopted on the recommendation of the Third Committee,[195] the General Assembly commended the Committee on the Elimination of Racial Discrimination for its work with regard to the implementation of the Convention on the Elimination of All Forms of Racial Discrimination and the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination;[196] and took note with appreciation of the report of the Committee on the work of its thirty-ninth and fortieth sessions.[197] Furthermore, by its decision 46/429 of 17 December 1991,[198] adopted on the recommendation of the Third Committee,[199] the General Assembly, aware that the Government of Australia had made a written request for the revision of article 8, paragraph 6, of the Convention, by substituting, for existing paragraph 6, a new paragraph reading "The Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention", and by adding a new paragraph, as paragraph 7, reading "The members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide", and having noted that article 23 of the Convention required the General Assembly to decide upon the steps, if any, to be taken in respect of such a request, decided: (*a*) to request the States parties to the Convention to consider the proposed revision at their next meeting; and (*b*) to request the meeting of States parties to limit the scope of any revision of the Convention to the question of arrangements for meeting the expenses of members of the Committee on the Elimination of Racial Discrimination while they were performing Committee duties, as provided for in article 8, paragraph 6, of the Convention.

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid*[200]

In 1991, three more States became parties to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

By its resolution 46/84 of 16 December 1991,[201] adopted on the recommendation of the Third Committee,[202] the General Assembly took note of the report of the Secretary-General on the status of the International Convention on the Suppression and Punishment of the Crime of Apartheid;[203] called upon all States whose transnational corporations continued to do business with South Africa to take appropriate steps to terminate their dealings with South Africa; requested the Commission on Human Rights to intensify, in cooperation with the Special Committee against Apartheid, its efforts to compile and update periodically the list of individuals, organizations, institutions and representatives of States deemed responsible for crimes enumerated in article II of the Convention, as well as those against whom or which legal proceedings had been undertaken; underlined the importance of the universal ratification of the Convention, which would be an effective contribution to the fulfilment of the ideals of the Universal Declaration of Human Rights and other human rights instruments; and appealed once again to those States that had not yet done so to ratify or to accede to the Convention without further delay.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women*[204]

In 1991, seven more States became parties to the Convention on the Elimination of All Forms of Discrimination against Women.

By its decision 46/426 of 16 December 1991,[205] adopted on the recommendation of the Third Committee,[206] the General Assembly took note of the report of the Committee on the Elimination of Discrimination against Women[207] and of the report of the Secretary-General on the Convention on the Elimination of All Forms of Discrimination against Women.[208]

(v) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[209]

In 1991, nine more States became parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

By its decision 46/428 of 17 December 1991,[210] adopted on the recommendation of the Third Committee,[211] the General Assembly took note of the report of the Secretary-General on the status of the Convention.[212]

(vi) *Convention on the Rights of the Child*[213]

In 1991, 44 more States became parties to the Convention on the Rights of the Child.

By its resolution 46/112 of 17 December 1991,[214] adopted on the recommendation of the Third Committee,[215] the General Assembly took note with appreciation of the report of the Secretary-General on the status of the Convention on the Rights of the Child;[216] expressed its satisfaction at the number of States that had signed, ratified or acceded to the Convention since it had been opened for signature, ratification and accession on 26 January 1990; called upon all States that had not done so to sign, ratify or accede to the Convention as a matter of priority; and requested the Secretary-General to provide all facilities and assistance necessary for the

dissemination of information on the Convention and its implementation, with a view to promoting further ratification of or accession to the Convention.

(vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*[217]

By its resolution 46/114 of 17 December 1991,[218] adopted on the recommendation of the Third Committee,[219] the General Assembly took note of the note of the Secretary-General on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;[220] called upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority, and expressed the hope that it would enter into force at an early date; requested the Secretary-General to provide all facilities and assistance necessary for the promotion of the Convention, through the World Public Information Campaign on Human Rights and the programme of advisory services in the field of human rights; and invited United Nations agencies and organizations, as well as intergovernmental and non-governmental organizations, to identify their efforts with a view to disseminating information on and promoting understanding of the Convention.

(viii) *Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights*

By its resolution 46/111 of 17 December 1991,[221] adopted on the recommendation of the Third Committee,[222] the General Assembly endorsed the conclusions and recommendations of the meetings of persons chairing the human rights treaty bodies aimed at streamlining, rationalizing and otherwise improving reporting procedures,[223] and supported the continuing efforts in that connection by the treaty bodies and the Secretary-General within their respective spheres of competence; once again expressed its satisfaction with the study by the independent expert on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations instruments on human rights;[224] requested the Secretary-General to give high priority to establishing a computerized database to improve the efficiency and effectiveness of the functioning of the treaty bodies; again urged States parties to make every effort to meet their reporting obligations and to contribute, individually and through meetings of States parties, to identifying and implementing ways of further streamlining and improving reporting procedures as well as enhancing coordination and information flow between the treaty bodies and with relevant United Nations bodies, including specialized agencies; and endorsed the recommendation, made in October 1990, of the third meeting of persons chairing the human rights treaty bodies, that the General Assembly should take appropriate measures to ensure the financing of each of the committees from the United Nations regular budget.[225]

(2) *World Conference on Human Rights*

By its resolution 46/116 of 17 December 1991,[226] adopted on the recommendation of the Third Committee,[227] the General Assembly recalling its resolution 45/155 of 18 December 1990 in which it had decided to convene at a high level a World Conference on Human Rights in 1993 and to establish a Preparatory Commission for the World Conference on Human Rights, took note with appreciation of the report of the Preparatory Committee for the World Conference on Human Rights on its first session;[228] decided that the Preparatory Committee, at its second session, would base the elaboration of the provisional agenda for the Conference on the objectives stated in paragraph 1 of resolution 45/155; and decided, in accordance with the decisions adopted by the Preparatory Committee, that the Conference should be convened at Berlin, for a period of two weeks in 1993 and requested the Secretary-General to prepare the relevant specific documentation as soon as possible.

(3) *Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms*

By its resolution 46/117 of 17 December 1991,[229] adopted on the recommendation of the Third Committee,[230] the General Assembly reiterated its request that the Commission on Human Rights should continue its current work on overall analysis with a view to further promoting and strengthening human rights and fundamental freedoms, including the question of the programme and working methods of the Commissions, and on the overall analysis of the alternative approaches and ways and means for improving the effective enjoyment of human rights and fundamental freedoms in accordance with the provisions and ideas set forth in General Assembly resolution 32/130 of 16 December 1977; affirmed that a primary aim of international cooperation in the field of human rights was a life of freedom, dignity and peace for all peoples and for every human being, that all human rights and fundamental freedoms were indivisible and interrelated and that the promotion and protection of one category of rights should never exempt or excuse States from promoting and protecting the others; reaffirmed that equal attention and urgent consideration should be given to the implementation, promotion and protection of civil and political rights and of economic, social and cultural rights; reiterated once again that the international community should accord, or continue to accord, priority to the search for solutions to mass and flagrant violations of human rights of peoples and individuals affected by situations such as those mentioned in paragraph 1 (*e*) of General Assembly resolution 32/130, paying due attention also to other situations of violations of human rights; reaffirmed that the right to development was an inalienable human right; and considered it necessary for all Member States to promote international cooperation on the basis of respect for the independence, sovereignty and territorial integrity of each State, including the right of every people to choose freely its own socio-economic and political system, with a view to solving international economic, social and humanitarian problems.

(4) *National institutions for the protection and promotion of human rights*

By its resolution 46/124 of 17 December 1991,[231] adopted on the recommendation of the Third Committee,[232] the General Assembly took note with satisfaction of the updated report of the Secretary-General on national institutions for the protection and promotion of human rights,[233] prepared in accordance with General Assembly resolution 44/64 of 8 December 1989; reaffirmed the importance of the development, in accordance with national legislation, of effective national institutions for the protection and promotion of human rights and of maintaining their independence and integrity; encouraged Member States to establish or, where they already existed, to strengthen national institutions for the protection and promotion of human rights and to incorporate those elements in national development plans; and welcomed the convening of a workshop on that subject by the Centre for Human Rights in Paris in October 1991, as had been requested in Commission on Human Rights resolution 1990/73 of 7 March 1990.

(5) *Human rights in the administration of justice*

By its resolution 46/120 of 17 December 1991,[234] adopted on the recommendation of the Third Committee,[235] the General Assembly reaffirmed the importance of the full and effective implementation of United Nations norms and standards on human rights in the administration of justice; once again called upon all States to pay due attention to those norms and standards in developing national and regional strategies for their practical implementation and to spare no effort in providing for effective legislative and other mechanisms and procedures, as well as for adequate financial resources to ensure more effective implementation of those norms and standards; and endorsed Economic and Social Council resolution 1991/15 of 30 May 1991 concerning the implementation of United Nations standards and norms in crime prevention and criminal justice.

(6) *Enhancing the effectiveness of the principle of periodic and genuine elections*

By its resolution 46/137 of 17 December 1991,[236] adopted on the recommendation of the Third Committee,[237] the General Assembly took note with appreciation of the report of the Secretary-General[238] on enhancing the effectiveness of the principle of periodic and genuine elections; underscored the significance of the Universal Declaration of Human Rights[239] and the International Covenant on Civil and Political Rights,[240] which established that the authority to govern should be based on the will of the people, as expressed in periodic and genuine elections; stressed its conviction that periodic and genuine elections were a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country was a crucial factor in the effective enjoyment by all of a wide range of

other human rights and fundamental freedoms, embracing political, economic, social and cultural rights; declared that determining the will of the people required an electoral process that provided an equal opportunity for all citizens to become candidates and put forward their political views, individually and in cooperation with others, as provided in national constitutions and laws; believed that the international community should continue to give serious consideration to ways in which the United Nations could respond to the requests of Member States as they sought to promote and strengthen their electoral institutions and procedures; endorsed the view of the Secretary-General that he should designate a senior official in the Offices of the Secretary-General to act as a focal point, in addition to existing duties and in order to ensure consistency in the handling of requests of Member States organizing elections, who would assist the Secretary-General to coordinate and consider requests for electoral verification and to channel requests for electoral assistance to the appropriate office or programme; and requested the Secretary-General to establish, in accordance with United Nations financial regulations, a voluntary trust fund for cases where the requesting Member State was unable to finance the electoral verification mission and to propose guidelines for disbursements therefrom. Furthermore, by its resolution 46/130 of the same date,[241] adopted also on the recommendation of the Third Committee,[242] the General Assembly reiterated that, by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples had the right, freely and without external interference, to determine their political status and to pursue their economic, social and cultural development, and that every State had the duty to respect that right in accordance with the provisions of the Charter; reaffirmed that it was the concern solely of peoples to determine methods and to establish institutions regarding the electoral process, as well as to determine the ways for its implementation according to their constitution and national legislation; recognized that there was no universal need for the United Nations to provide electoral assistance to Member States, except in special circumstances such as cases of decolonization, in the context of regional or international peace processes or at the request of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each individual case, in strict conformity with the principles of sovereignty and non-interference in the internal affairs of States; and called upon the Commission on Human Rights, at its forty-eighth session, to give priority to the review of the fundamental factors that negatively affected the observance of the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes and to report to the General Assembly at its forty-seventh session, through the Economic and Social Council.

(7) *Strengthening of United Nations action in the human rights field through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity*

By its resolution 46/129 of 17 December 1991,[243] adopted on the recommendation of the Third Committee,[244] the General Assembly called

upon all Member States to base their activities for the protection and promotion of human rights, including the development of further international cooperation in that field, on the Charter of the United Nations, the Universal Declaration of Human Rights,[245] the International Covenants on Human Rights[246] and other relevant international instruments and to refrain from activities that were inconsistent with that international legal framework; affirmed that the promotion, protection and full realization of all human rights and fundamental freedoms, as legitimate concerns of the world community, should be guided by the principles of non-selectivity, impartiality and objectivity and should not be used for political ends; invited Member States to consider adopting, as appropriate, within the framework of their respective legal systems and in accordance with their obligations under international law, especially the Charter, as well as international human rights instruments, the measures that they might deem appropriate to achieve further progress in international cooperation in promoting and encouraging respect for human rights and fundamental freedoms; and requested the Commission on Human Rights, at its forty-eighth session, to continue to examine ways and means to strengthen United Nations action in that regard, on the basis of the current resolution and of Commission on Human Rights resolution 1991/79 of 6 March 1991.

(8) *Elimination of all forms of religious intolerance*

By its resolution 46/131 of 17 December 1991,[247] adopted on the recommendation of the Third Committee,[248] the General Assembly reaffirmed that freedom of thought, conscience, religion and belief was a right guaranteed to all without discrimination; urged States, therefore, in accordance with their respective constitutional systems and with such internationally accepted instruments as the Universal Declaration of Human Rights,[249] the International Covenant on Civil and Political Rights[250] and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,[251] to provide, where they had not already done so, adequate constitutional and legal guarantees of freedom of thought, conscience, religion and belief; called upon all States to recognize, as provided in the Declaration, the right of all persons to worship or assemble in connection with a religion or belief, and to establish and maintain places for those purposes; encouraged the continued efforts on the part of the Special Rapporteur appointed to examine incidents and governmental actions in all parts of the world that were incompatible with the provisions of the Declaration and to recommend remedial measures as appropriate;[252] recommended that the promotion and protection of the right to freedom of thought, conscience and religion be given appropriate priority in the work of the United Nations programme of advisory services in the field of human rights, with regard to, *inter alia*, the drafting of basic legal texts in conformity with international instruments on human rights and taking into account the provisions of the Declaration; welcomed the announced intention of the Human Rights Committee to prepare a general comment on article 18 of the International Covenant on Civil and Political Rights, dealing with freedom of thought, conscience and religion; urged all States to consider disseminating the text of the Declaration in their respec-

tive national languages and to facilitate its dissemination in national and local languages; and requested the Commission on Human Rights to continue its consideration of measures to implement the Declaration.

(9) *Non-discrimination and protection of minorities*

By its resolution 46/115 of 17 December 1991,[253] adopted on the recommendation of the Third Committee,[254] the General Assembly, stressing the need to ensure for all, without discrimination of any kind, full enjoyment of human rights and fundamental freedoms and, in particular, to accomplish the elaboration of a draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, encouraged the Commission on Human Rights to complete the final text of the draft declaration on the subject as soon as possible and to transmit it for adoption to the General Assembly, through the Economic and Social Council.

(10) *The protection of persons with mental illness and the improvement of mental health care*

By its resolution 46/119 of 17 December 1991,[255] adopted on the recommendation of the Third Committee,[256] the General Assembly, recalling its resolution 33/53 of 14 December 1978, in which it had requested the Commission on Human Rights to urge the Subcommission on Prevention of Discrimination and Protection of Minorities to undertake, as a matter of priority, a study of the question of the protection of those detained on the grounds of mental ill-health, with a view to formulating guidelines, and taking note of the note of the Secretary-General,[257] the annex to which contained the draft body of principles and the introduction to the body of principles, adopted the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, the text of which was contained in the annex to the resolution.

ANNEX

Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care

Application

The present Principles shall be applied without discrimination on any grounds, such as disability, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth.

Definitions

In the present Principles:

(*a*) "Counsel" means a legal or other qualified representative;

(*b*) "Independent authority" means a competent and independent authority prescribed by domestic law;

(*c*) "Mental health care" includes analysis and diagnosis of a person's mental condition, and treatment, care and rehabilitation for a mental illness or suspected mental illness;

(*d*) "Mental health facility" means any establishment, or any unit of an establishment, which as its primary function provides mental health care;

(*e*) "Mental health practitioner" means a medical doctor, clinical psychologist, nurse, social worker or other appropriately trained and qualified person with specific skills relevant to mental health care;

(*f*) "Patient" means a person receiving mental health care and includes all persons who are admitted to a mental health facility;

(*g*) "Personal representative" means a person charged by law with the duty of representing a patient's interests in any specified respect or of exercising specified rights on the patient's behalf, and includes the parent or legal guardian of a minor unless otherwise provided by domestic law;

(*h*) "The review body" means the body established in accordance with principle 17 to review the involuntary admission or retention of a patient in a mental health facility.

General limitation clause

The exercise of the rights set forth in the present Principles may be subject only to such limitations as are prescribed by law and are necessary to protect the health or safety of the person concerned or of others, or otherwise to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

PRINCIPLE 1

Fundamental freedoms and basic rights

1. All persons have the right to the best available mental health care, which shall be part of the health and social care system.

2. All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.

3. All persons with a mental illness, or who are being treated as such persons, have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.

4. There shall be no discrimination on the grounds of mental illness. "Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory. Discrimination does not include any distinction, exclusion or preference undertaken in accordance with the provisions of the present Principles and necessary to protect the human rights of a person with a mental illness or of other individuals.

5. Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and in other relevant instruments, such as the Declaration on the Rights of Disabled Persons[142] and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

6. Any decision that, by reason of his or her mental illness, a person lacks legal capacity, and any decision that, in consequence of such incapacity, a personal

representative shall be appointed, shall be made only after a fair hearing by an independent and impartial tribunal established by domestic law. The person whose capacity is at issue shall be entitled to be represented by a counsel. If the person whose capacity is at issue does not himself or herself secure such representation, it shall be made available without payment by that person to the extent that he or she does not have sufficient means to pay for it. The counsel shall not in the same proceedings represent a mental health facility or its personnel and shall not also represent a member of the family of the person whose capacity is at issue unless the tribunal is satisfied that there is no conflict of interest. Decisions regarding capacity and the need for a personal representative shall be reviewed at reasonable intervals prescribed by domestic law. The person whose capacity is at issue, his or her personal representative, if any, and any other interested person shall have the right to appeal to a higher court against any such decision.

7. Where a court or other competent tribunal finds that a person with mental illness is unable to manage his or her own affairs, measures shall be taken, so far as is necessary and appropriate to that person's condition, to ensure the protection of his or her interests.

PRINCIPLE 2

Protection of minors

Special care should be given within the purposes of the Principles and within the context of domestic law relating to the protection of minors to protect the rights of minors, including, if necessary, the appointment of a personal representative other than a family member.

PRINCIPLE 3

Life in the community

Every person with a mental illness shall have the right to live and work, to the extent possible, in the community.

PRINCIPLE 4

Determination of mental illness

1. A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.

2. A determination of mental illness shall never be made on the basis of political, economic or social status, or membership in a cultural, racial or religious group, or for any other reason not directly relevant to mental health status.

3. Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in the diagnosis of mental illness.

4. A background of past treatment or hospitalization as a patient shall not of itself justify any present or future determination of mental illness.

5. No person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences of mental illness.

PRINCIPLE 5

Medical examination

No person shall be compelled to undergo medical examination with a view to determining whether or not be or she has a mental illness except in accordance with a procedure authorized by domestic law.

PRINCIPLE 6

Confidentiality

The right of confidentiality of information concerning all persons to whom the present Principles apply shall be respected.

PRINCIPLE 7

Role of community and culture

1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.

2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her home or the home of his or her relatives or friends and shall have the right to return to the community as soon as possible.

3. Every patient shall have the right to treatment suited to his or her cultural background.

PRINCIPLE 8

Standards of care

1. Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.

2. Every patient shall be protected from harm, including unjustified medication, abuse by other patients, staff or others or other acts causing mental distress or physical discomfort.

PRINCIPLE 9

Treatment

1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.

2. The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.

3. Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.

4. The Treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

PRINCIPLE 10

Medication

1. Medication shall meet the best health needs of the patient, shall be given to a patient only for therapeutic or diagnostic purposes and shall never be administered as a punishment or for the convenience of others. Subject to the provisions of paragraph 15 of principle 11 below, mental health practitioners shall only administer medication of known or demonstrated efficacy.

2. All medication shall be prescribed by a mental health practitioner authorized by law and shall be recorded in the patient's records.

PRINCIPLE 11

Consent to treatment

1. No treatment shall be given to a patient without his or her informed consent, except as provided for in paragraphs 6, 7, 8 13 and 15 of the present principle.

2. Informed consent is consent obtained freely, without threats or improper inducements, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on:

(*a*) The diagnostic assessment;

(*b*) The purpose, method, likely duration and expected benefit of the proposed treatment;

(*c*) Alternative modes of treatment, including those less intrusive;

(*d*) Possible pain or discomfort, risks and side-effects of the proposed treatment.

3. A patient may request the presence of a person or persons of the patient's choosing during the procedure for granting consent.

4. A patient has the right to refuse or stop treatment, except as provided for in paragraphs 6, 7, 8, 13 and 15 of the present principle. The consequences of refusing or stopping treatment must be explained to the patient.

5. A patient shall never be invited or induced to waive the right to informed consent. If the patient should seek to do so, it shall be explained to the patient that the treatment cannot be given without informed consent.

6. Except as provided in paragraphs 7, 8, 12, 13, 14 and 15 of the present principle, a proposed plan of treatment may be given to a patient without a patient's informed consent if the following conditions are satisfied:

(*a*) The patient is, at the relevant time, held as an involuntary patient;

(*b*) An independent authority, having in its possession all relevant information, including the information specified in paragraph 2 of the present principle, is satisfied that, at the relevant time, the patient lacks the capacity to give or withhold informed consent to the proposed plan of treatment or, if domestic legislation so provides, that, having regard to the patient's own safety or the safety of others, the patient unreasonably withholds such consent;

(*c*) The independent authority is satisfied that the proposed plan of treatment is in the best interest of the patient's health needs.

7. Paragraph 6 above does not apply to a patient with a personal representative empowered by law to consent to treatment for the patient; but, except as

provided in paragraphs 12, 13, 14 and 15 of the present principle, treatment may be given to such a patient without his or her informed consent if the personal representative, having been given the information described in paragraph 2 of the present principle, consents on the patient's behalf.

8. Except as provided in paragraphs 12, 13, 14 and 15 of the present principle, treatment may also be given to any patient without the patient's informed consent if a qualified mental health practitioner authorized by law determines that it is urgently necessary in order to prevent immediate or imminent harm to the patient or to other persons. Such treatment shall not be prolonged beyond the period that is strictly necessary for this purpose.

9. Where any treatment is authorized without the patient's informed consent, every effort shall nevertheless be made to inform the patient about the nature of the treatment and any possible alternatives and to involve the patient as far as practicable in the development of the treatment plan.

10. All treatment shall be immediately recorded in the patient's medical records, with an indication of whether involuntary or voluntary.

11. Physical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures of the mental health facility and only when it is the only means available to prevent immediate or imminent harm to the patient or others. It shall not be prolonged beyond the period which is strictly necessary for this purpose. All instances of physical restraint or involuntary seclusion, the reasons for them and their nature and extent shall be recorded in the patient's medical record. A patient who is restrained or secluded shall be kept under humane conditions and be under the care and close and regular supervision of qualified members of the staff. A personal representative, if any and if relevant, shall be given prompt notice of any physical restraint or involuntary seclusion of the patient.

12. Sterilization shall never be carried out as a treatment for mental illness.

13. A major medical or surgical procedure may be carried out on a person with mental illness only where it is permitted by domestic law, where it is considered that it would best serve the health needs of the patient and where the patient gives informed consent, except that, where the patient is unable to give informed consent, the procedure shall be authorized only after independent review.

14. Psychosurgery and other intrusive and irreversible treatments for mental illness shall never be carried out on a patient who is an involuntary patient in a mental health facility and, to the extent that domestic law permits them to be carried out, they may be carried out on any other patient only where the patient has given informed consent and an independent external body has satisfied itself that there is genuine informed consent and that the treatment best serves the health needs of the patient.

15. Clinical trials and experimental treatment shall never be carried out on any patient without informed consent, except that a patient who is unable to give informed consent may be admitted to a clinical trial or given experimental treatment, but only with the approval of a competent, independent review body specifically constituted for this purpose.

16. In the cases specified in paragraphs 6, 7, 8, 13, 14 and 15 of the present principle, the patient or his or her personal representative, or any interested person, shall have the right to appeal to a judicial or other independent authority concerning any treatment given to him or her.

PRINCIPLE 12

Notice of rights

1. A patient in a mental health facility shall be informed as soon as possible after admission, in a form and a language which the patient understands, of all his or her rights in accordance with the present Principles and under domestic law, and the information shall include an explanation of those rights and how to exercise them.

2. If and for so long as a patient is unable to understand such information, the rights of the patient shall be communicated to the personal representative, if any and if appropriate, and to the person or persons best able to represent the patient's interests and willing to do so.

3. A patient who has the necessary capacity has the right to nominate a person who should be informed on his or her behalf, as well as a person to represent his or her interests to the authorities of the facility.

PRINCIPLE 13

Rights and conditions in mental health facilities

1. Every patient in a mental health facility shall, in particular, have the right to full respect for his or her:

(*a*) Recognition everywhere as a person before the law;

(*b*) Privacy;

(*c*) Freedom of communication, which includes freedom to communicate with other persons in the facility; freedom to send and receive uncensored private communications; freedom to receive, in private, visits from a counsel or personal representative and, at all reasonable times, from other visitors; and freedom of access to postal and telephone services and to newspapers, radio and television;

(*d*) Freedom of religion or belief.

2. The environment and living conditions in mental health facilities shall be as close as possible to those of the normal life of persons of similar age and in particular shall include:

(*a*) Facilities for recreational and leisure activities;

(*b*) Facilities for education;

(*c*) Facilities to purchase or receive items for daily living, recreation and communication;

(*d*) Facilities, and encouragement to use such facilities, for a patient's engagement in active occupation suited to his or her social and cultural background, and for appropriate vocational rehabilitation measures to promote reintegration in the community. These measures should include vocational guidance, vocational training and placement services to enable patients to secure or retain employment in the community.

3. In no circumstances shall a patient be subject to forced labour. Within the limits compatible with the needs of the patient and with the requirements of institutional administration, a patient shall be able to choose the type of work he or she wishes to perform.

4. The labour of a patient in a mental health facility shall not be exploited. Every such patient shall have the right to receive the same remuneration for any work which he or she does as would, according to domestic law or custom, be paid for such work to a non-patient. Every such patient shall, in any event, have the right to receive a fair share of any remuneration which is paid to the mental health facility for his or her work.

PRINCIPLE 14

Resources for mental health facilities

1. A mental health facility shall have access to the same level of resources as any other health establishment, and in particular:

(*a*) Qualified medical and other appropriate professional staff in sufficient numbers and with adequate space to provide each patient with privacy and a programme of appropriate and active therapy;

(*b*) Diagnostic and therapeutic equipment for the patient;

(*c*) Appropriate professional care;

(*d*) Adequate, regular and comprehensive treatment, including supplies of medication.

2. Every mental health facility shall be inspected by the competent authorities with sufficient frequency to ensure that the conditions, treatment and care of patients comply with the present Principles.

PRINCIPLE 15

Admission principles

1. Where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission.

2. Access to a mental health facility shall be administered in the same way as access to any other facility for any other illness.

3. Every patient not admitted involuntarily shall have the right to leave the mental health facility at any time unless the criteria for his or her retention as an involuntary patient, as set forth is principle 16 below, apply, and he or she shall be informed of that right.

PRINCIPLE 16

Involuntary admission

1. A person may be admitted involuntarily to a mental health facility as a patient or, having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility if, and only if, a qualified mental health practitioner authorized by law for that purpose determines, in accordance with principle 4 above, that that person has a mental illness and considers:

(*a*) That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(*b*) That, in the case of a person whose mental illness is severe and whose judgement is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

In the case referred to in subparagraph (*b*), a second such mental health practitioner, independent of the first, should be consulted where possible. If such consultation takes place, the involuntary admission or retention may not take place unless the second mental health practitioner concurs.

2. Involuntary admission or retention shall initially be for a short period as specified by domestic law for observation and preliminary treatment pending review of the admission or retention by the review body. The grounds of the admission shall be communicated to the patient without delay and the fact of the

admission and the grounds for it shall also be communicated promptly and in detail to the review body, to the patient's personal representative, if any, and, unless the patient objects, to the patient's family.

3. A mental health facility may receive involuntarily admitted patients only if the facility has been designated to do so by a competent authority prescribed by domestic law.

PRINCIPLE 17

Review body

1. The review body shall be a judicial or other independent and impartial body established by domestic law and functioning in accordance with procedures laid down by domestic law. It shall, in formulating its decisions, have the assistance of one or more qualified independent mental health practitioners and take their advice into account.

2. The initial review of the review body, as required by paragraph 2 of principle 16 above, of a decision to admit or retain a person as an involuntary patient shall take place as soon as possible after that decision and shall be conducted in accordance with simple and expeditious procedures as specified by domestic law.

3. The review body shall periodically review the cases of involuntary patients at reasonable intervals as specified by domestic law.

4. An involuntary patient may apply to the review body for release or voluntary status, at reasonable intervals as specified by domestic law.

5. At each review, the review body shall consider whether the criteria for involuntary admission set out in paragraph 1 of principle 16 above are still satisfied, and, if not, the patient shall be discharged as an involuntary patient.

6. If at any time the mental health practitioner responsible for the case is satisfied that the conditions for the retention of a person as an involuntary patient are no longer satisfied, he or she shall order the discharge of that person as such a patient.

7. A patient or his personal representative or any interested person shall have the right to appeal to a higher court against a decision that the patient be admitted to, or be retained in, a mental health facility.

PRINCIPLE 18

Procedural safeguards

1. The patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

2. The patient shall also be entitled to the assistance, if necessary, of the services of an interpreter. Where such services are necessary and the patient does not secure them, they shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

3. The patient and the patient's counsel may request and produce at any hearing an independent mental health report and any other reports and oral, written and other evidence that are relevant and admissible.

4. Copies of the patient's records and any reports and documents to be submitted shall be given to the patient and to the patient's counsel, except in special cases where it is determined that a specific disclosure to the patient would cause

serious harm to the patient's health or put at risk the safety of others. As domestic law may provide, any document not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any part of a document is withheld from a patient, the patient or the patient's counsel if any, shall receive notice of the withholding and the reasons for it and it shall be subject to judicial review.

5. The patient and the patient's personal representative and counsel shall be entitled to attend, participate and be heard personnally in any hearing.

6. If the patient or the patient's personal representative or counsel requests that a particular person be present at a hearing, that person shall be admitted unless it is determined that the person's presence could cause serious harm to the patient's health or put at risk the safety of others.

7. Any decision on whether the hearing or any part of it shall be in public or in private and may be publicly reported shall give full consideration to the patient's own wishes, to the need to respect the privacy of the patient and of other persons and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

8. The decision arising out of the hearing and the reasons for it shall be expressed in writing. Copies shall be given to the patient and his or her personal representative and counsel. In deciding whether the decision shall be published in whole or in part, full consideration shall be given to the patient's own wishes, to the need to respect his or her privacy and that of other persons, to the public interest in the open administration of justice and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

PRINCIPLE 19

Access to information

1. A patient (which term in the present principle includes a former patient) shall be entitled to have access to the information concerning the patient in his or her health and personal records maintained by a mental health facility. This right may be subject to restrictions in order to prevent serious harm to the patient's health and avoid putting at risk the safety of others. As domestic law may provide, any such information not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any of the information is withheld from a patient, the patient or the patient's counsel, if any, shall receive notice of the withholding and the reasons for it and it shall be subject to judicial review.

2. Any written comments by the patient or the patient's personal representative or counsel shall, on request, be inserted in the patient's file.

PRINCIPLE 20

Criminal offenders

1. The present principle applies to persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such an illness.

2. All such persons should receive the best available mental health care as provided in principle 1 above. The present Principles shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances. No such modifications and exceptions shall preju-

dice the persons' rights under the instruments noted in paragraph 5 of principle 1 above.

3. Domestic law may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility.

4. Treatment of persons determined to have a mental illness shall in all circumstances be consistent with principle 11 above.

PRINCIPLE 21

Complaints

Every patient and former patient shall have the right to make a complaint through procedures as specified by domestic law.

PRINCIPLE 22

Monitoring and remedies

States shall ensure that appropriate mechanisms are in force to promote compliance with the present Principles, for the inspection of mental health facilities, for the submission, investigation and resolution of complaints and for the institution of appropriate disciplinary or judicial proceedings for professional misconduct or violation of the rights of a patient.

PRINCIPLE 23

Implementation

1. States should implement the present Principles through appropriate legislative, judicial, administrative, educational and other measures, which they shall review periodically.

2. States shall make the present Principles widely known by appropriate and active means.

PRINCIPLE 24

Scope of principles relating to mental health facilities

The present Principles apply to all persons who are admitted to a mental health facility.

PRINCIPLE 25

Saving of existing rights

There shall be no restriction upon or derogation from any existing rights of patients, including rights recognized in applicable international or domestic law, on the pretext that the present Principles do not recognize such rights or that they recognize them to a lesser extent.

(11) *Question of enforced or involuntary disappearances*

By its resolution 46/125 of 17 December 1991,[258] adopted on the recommendation of the Third Committee,[259] the General Assembly noted with satisfaction that the open-ended working group established by Commission on Human Rights resolution 1991/41 of 5 March 1991 had com-

pleted its consideration of the draft declaration on the protection of all persons from enforced or involuntary disappearances,[260] which would be transmitted to the Commission on Human Rights for adoption at its forty-eighth session; requested the Commission to give that question high priority at its forty-eighth session; and appealed to Governments to take appropriate steps to prevent and suppress the practice of enforced disappearances and to take action at the national and regional levels and in cooperation with the United Nations to that end.

(12) *Human rights and extreme poverty*

By its resolution 46/121 of 17 December 1991,[261] adopted on the recommendation of the Third Committee,[262] the General Assembly affirmed that extreme poverty and exclusion from society constituted a violation of human dignity and that urgent national and international measures were therefore required to eliminate them; stressed the need for an in-depth and complete study of the nature of the phenomenon of extreme poverty which affected mankind; and requested the Commission on Human rights to give appropriate consideration, in directing its studies of extreme poverty, to the conditions in which the poorest themselves could convey their experience and so contribute to a better understanding of their situation of social exclusion.

(13) *Human rights and mass exoduses*

By its resolution 46/127 of 17 December 1991,[263] adopted on the recommendation of the Third Committee,[264] the General Assembly reaffirmed its support for the recommendations of the Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees[265] that the principal organs of the United Nations should make fuller use of their respective competencies under the Charter of the United Nations for the prevention of new massive flows of refugees and displaced persons; requested all Governments to ensure the effective implementation of the relevant international instruments, in particular in the field of human rights, as that would contribute to averting new massive flows of refugees and displaced persons; and took note of the report of the Secretary-General on human rights and mass exoduses,[266] and reiterated its request that future reports include information concerning the modalities and operations of early-working activities to avert new and massive flows of refugees.

(14) *Human rights and scientific and technological progress*

By its resolution 46/126 of 17 December 1991,[267] adopted on the recommendation of the Third Committee,[268] the General Assembly underlined the importance of the implementation by all States of the provisions and principles contained in the Universal Declaration of Human Rights[269] and the International Covenants on Human Rights[270] and the relevant provisions of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind[271] for the promotion of the realization of human rights and fundamental freedoms;

called upon all Member States to ensure that the achievements of scientific and technological progress and the intellectual potential of mankind were used for promoting and encouraging universal respect for human rights and fundamental freedoms; also called upon Member States to take necessary measures to ensure that the results of science and technology were used only for the benefit of the human being and did not lead to the disturbance of the ecological environment; and emphasized that scientific knowledge and technology in health, education, housing and other social spheres should be readily available to the population as the heritage of humanity.

(15) *Right of peoples to self-determination*

(i) *Universal realization of the right of peoples to self-determination*

By its resolution 46/88 of 16 December 1991,[272] adopted on the recommendation of the Third Committee,[273] the General Assembly reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination was a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights; and 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. Furthermore, by its resolution 46/87 of the same date,[274] adopted also on the recommendation of the Third Committee,[275] the Assembly called upon all States to implement fully and faithfully all the relevant resolutions of the United Nations regarding the exercise of the right to self-determination and independence by peoples under colonial and foreign domination; and reaffirmed the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign occupation, in all its forms by all available means.

(ii) *Use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination*

By its resolution 46/89 of 16 December 1991,[276] adopted on the recommendation of the Third Committee,[277] the General Assembly, recalling with satisfaction the adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries,[278] and welcoming the fulfilment of the provisions of paragraph 2 of Commission on Human Rights resolution 1991/29 of 5 March 1991,[279] as reflected in the report of the Special Rapporteur of the Commission,[280] took note with appreciation of the report of the Special Rapporteur of the Commission on Human Rights; condemned the continued recruitment, financing, training, assembly, transit and use of mercenaries, as well as all other forms of support to mercenaries, for the purpose of destabilizing and overthrowing the Governments of African States and of other developing States and fighting against the national liberation movements of peoples struggling for the exercise of their right to self-determination; reaffirmed that the use of mercenaries and their recruitment, financing and training were offences

of grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations; urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both administrative and legislative measures, that the territory of those States and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training and transit of mercenaries, or for the planning of activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid, colonial domination and foreign intervention or occupation; and called upon all States which had not yet done so to consider taking early action to accede to or to ratify the Convention.

(16) *Right to development*

By its resolution 46/123 of 17 December 1991,[281] adopted on the recommendation of the Third Committee,[282] the General Assembly recalling the proclamation at its forty-first session of the Declaration on the Right to Development,[283] reaffirmed the importance of the right to development for all countries, in particular the developing countries; took note with interest of the comprehensive report of the Secretary-General;[284] requested the Secretary-General to submit to the Commission on Human Rights at its forty-eighth session concrete proposals on the effective implementation and promotion of the Declaration on the Right to Development, taking into account the views expressed on the issue at the forty-seventh session of the Commission as well as any further comments and suggestions that might be submitted on the basis of paragraph 3 of Commission resolution 1990/18 of 23 February 1990.

(*f*) Crime prevention and criminal justice

By its decision 46/435 of 18 December 1991,[285] adopted on the recommendation of the Third Committee,[286] the General Assembly took note of the report of the Secretary-General[287] on the progress achieved in the implementation of General Assembly resolution 45/121 of 14 December 1990 on the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

(*g*) Return or restitution of cultural property to the countries of origin

By its resolution 46/10 of 22 October 1991,[288] the General Assembly, recalling the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,[289] adopted on 14 November 1970 by the General Conference of the United Nations Educational, Scientific and Cultural Organization, and taking note with satisfaction of the report of the Secretary-General submitted in cooperation with the Director-General of UNESCO,[290] commended UNESCO and the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation on the work they had accomplished, in particular through the

promotion of bilateral negotiations, for the return or restitution of cultural property, the preparation of inventories of movable cultural property, the reduction of illicit traffic in cultural property and the dissemination of information to the public; reaffirmed that the restitution to the country of its objets d'art, monuments, museum pieces, archives, manuscripts, documents and any other cultural or artistic treasures contributed to the strengthening of international cooperation and to the preservation and flowering of universal cultural values through fruitful cooperation between developed and developing countries; recommended that Member States adopt or strengthen the necessary protective legislation with regard to their own heritage and that of other peoples; requested Member States to study the possibility of including in permits for excavations a clause requiring archaeologists and palaeontologists to provide the national authorities with photographic documentation of each object brought to light during the excavations immediately after its discovery; invited Member States to continue drawing up, in cooperation with UNESCO, systematic inventories of cultural property existing in their territory and of their cultural property abroad; and invited once again those Member States that had not yet done so to sign and ratify the Convention.

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4. LAW OF THE SEA

Status of the United Nations Convention on the Law of the Sea[291]

As of 31 December 1991, 51 States had ratified the United Nations Convention on the Law of the Sea or acceded to it.

Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea[292]

The Preparatory Commission met twice during 1991. It held its ninth session at Kingston from 25 February to 22 March 1991, and a summer meeting in New York from 12 to 30 August 1991.

Regarding the implementation of resolution II of the Third United Nations Conference on the Law of the Sea, the Preparatory Commission approved two applications for registration as pioneer investors in 1991. The first application was submitted by China for registration of the China Ocean Mineral Resources Research and Development Association (COMRA) as a pioneer investor, and was approved by the General Committee on the basis of the report of the Group of Technical Experts on 5 March 1991.[293] The second application was submitted by Bulgaria, Cuba, the Czech and Slovak Federal Republic, Poland and the USSR for registration of the Interoceanmetal Joint Organization (IOM) as a pioneer investor, and was approved by the General Committee on the basis of the report of the Group of Technical Experts on 21 August 1991.[294]

The Preparatory Commission, on the recommendation of the General Committee, decided to include Cuba in the list of States having the right to

apply as pioneer investors in accordance with resolution II for one pioneer area until the Convention on the Law of the Sea entered into force.

With respect to the implementation of the obligations of the first group of registered pioneer investors and their certifying States, i.e., France, India, Japan and the USSR, in accordance with the Understanding on the Fulfilment of Obligations by the Registered Pioneer Investors and their Certifying States which was adopted on 30 August 1990,[295] the following developments took place during the summer meeting: (i) *Training:* The Training Panel commenced its work on the establishment of a training schedule. It decided that traineeships should cover the following priority disciplines: chemical/metallurgical, electrical, electronic, mechanical and mining engineering as well as marine geology, marine geophysics and marine ecology; (ii) *Exploration:* The preparatory work for the exploration of one mine site in the area reserved for the Authority had been completed by France, Japan and the Soviet Union and a joint report entitled "Preparatory work in the International Authority reserved area—August 1991" had been transmitted to the Special Representative of the Secretary-General for the Law of the Sea for submission to the Preparatory Commission.

Regarding the preparation of draft agreements, rules, regulations and procedures for the International Seabed Authority, the Preparatory Commission completed its second reading of the draft agreement concerning the relationship between the United Nations and the Authority and provisionally approved a number of its provisions. As far as the articles on personnel arrangements, budgetary and financial matters and the financing of special services were concerned; it was decided to defer their consideration until after the discussion of the paper on administrative arrangements, structures and financial implications of the Authority. The Preparatory Commission began its consideration of the above-mentioned paper at the summer meeting. Focusing its attention on matters such as financial guidelines, functions of the Authority during the initial period, staffing requirements, etc., the Commission agreed that the structure of the Authority should ensure efficiency and cost-effectiveness and that it should be no larger or smaller than required in order to guarantee the adequate performance of its functions at a particular stage of its activities; that an evolutionary approach should be provided for; and that the nature and level of the staff would depend on the activities to be performed by the Authority. Informal consultations also continued on matters relating to the Finance Committee.

The four Special Commissions of the Preparatory Commission had been considering the substantive work allocated to them. Special Commission 1, which was charged with the problems that would be encountered by developing land-based producer States from deep seabed mineral production, continued its consideration of the provisional conclusions of its deliberations which could form the basis of its recommendations to the Authority on how best to minimize the difficulties of land-based producer States. A negotiating group was established to facilitate the negotiations and suggest compromise solutions. Special Commission 2, which was mandated to prepare for the early entry into effective operation of the

Enterprise, concluded its final reading of the working paper on the structure and organization of the Enterprise. Special Commission 3, which was preparing rules, regulations and procedures for the exploration and exploitation of the deep seabed, completed its first reading of part VIII of the draft regulations on prospecting, exploration and exploitation of polymetallic modules in the international seabed area ("the Area"), dealing with the protection and preservation of the marine environment from the activities in the Area; concluded its consideration of the draft regulations on accommodation of activities in the Area and in the marine environment; and completed its first reading of a working paper containing draft regulations on accounting principles and procedures, relating to the financial terms of contracts between the Authority and its contractors. Special Commission 4, which was preparing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea, continued its consideration of administrative arrangements, structure and financial implications of the Tribunal, and examined a scheme to phase in the establishment of the Tribunal to serve during the initial stage of its existence. The Special Commission also undertook an article-by-article reading of the revised draft protocol on the privileges and immunities of the Tribunal and approved a considerable number of the provisions. With regard to the revised draft headquarters agreement between the Tribunal and the Federal Republic of Germany, the Special Commission in its review of the document, approved, with some exceptions, articles 1 to 19. Informal consultations were also continued on matters relating to the seat of the Tribunal with a view to reconciling divergent opinions concerning the approach to be taken with regard to the requirements listed in the introductory note to the revision of the official draft Convention.[296]

Consideration by the General Assembly

By its resolution 46/78 of 12 December 1991,[297] the General Assembly recalled the historic significance of the United Nations Convention on the Law of the Sea as an important contribution to the maintenance of peace, justice and progress for all peoples of the world; noted with appreciation the initiative of the Secretary-General to promote dialogue aimed at addressing issues of concern to some States in order to achieve universal participation in the Convention;[298] called upon all States that had not done so to consider ratifying or acceding to the Convention at the earliest possible date to allow the effective entry into force of the new legal regime for the uses of the sea and its resources and called upon all States to take appropriate steps to promote universal participation in the Convention, including through dialogue aimed at addressing the issues of concern to some States; called upon all States to safeguard the unified character of the Convention and related resolutions adopted therewith and to apply them in a manner consistent with that character and with their object and purpose; called upon States to observe the provisions of the Convention when enacting their national legislation; noted the progress being made by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea in all areas of its work; and called upon the Secretary-General to continue to assist States

in the implementation of the Convention and in the development of a consistent and uniform approach to the legal regime thereunder, as well as in their national, subregional and regional efforts towards the full realization of the benefits therefrom, and invited the organs and organizations of the United Nations system to cooperate and lend assistance in those endeavours.

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5. INTERNATIONAL COURT OF JUSTICE[299, 300]

Cases before the Court

A. CONTENTIOUS CASES BEFORE THE FULL COURT

(i) *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*[301]

By a letter dated 12 September 1991, the Agent of Nicaragua informed the Court that his Government had decided to renounce all further right of action based on the case and requested that an Order be made officially recording the discontinuance of the proceedings and directing the removal of the case from the list.

As required by Article 89 of the Rules of Court, the President of the Court then fixed 25 September 1991 as the time-limit within which the United States of America might state whether it opposed the discontinuance. On that date a letter welcoming the discontinuance was received from the Legal Adviser of the United States Department of State, writing on behalf of his Government.

Consequently, on 26 September 1991, the President of the Court made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's list.[302]

(ii) *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)*[303]

On 4 March 1991, within the time-limit fixed for the filing of its Counter-Memorial, the United States of America filed certain preliminary objections to the jurisdiction of the Court. By virtue of the provisions of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended and a time-limit had to be fixed for the presentation by the other Party of a written statement of its observations and submissions on the preliminary objections. By an Order of 9 April 1991,[304] the Court, having ascertained the views of the Parties, fixed 9 December 1991 as the time-limit within which the Islamic Republic of Iran might present such observations and submissions.

The Islamic Republic of Iran chose Mr. Mohsen Aghahosseini to sit as judge ad hoc.

(iii) *Certain Phosphate Lands in Nauru (Nauru v. Australia)*[305]

On 16 January 1991, within the time-limit fixed for the filing of the Counter-Memorial, Australia filed certain preliminary objections whereby it asked the Court to adjudge and declare "that the Application by Nauru is inadmissible and that the Court lacks jurisdiction to hear the claims made by Nauru". In accordance with Article 79, paragraph 2, of the Rules of Court, the proceedings on the merits were suspended and the Court, by an Order of 8 February 1991,[306] fixed 19 July 1991 as the time-limit within which Nauru might present a written statement of its observations and submissions on the objections. This written statement was filed within the prescribed time-limit.

Oral proceedings on the issues of jurisdiction and admissibility were held from 11 to 22 November 1991. During eight public sittings the Court heard statements made on behalf of Australia and Nauru. Members of the Court put questions to the Parties.

(iv) *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*[307]

Oral proceedings on the merits of the case where held from 3 to 11 April 1991. During seven public sittings, the Court heard statements made on behalf of Guinea-Bissau and of Senegal. Members of the Court put questions to the Parties.

On 12 November 1991, at a public sitting, the Court delivered its judgment,[308] a summary of which is given below, followed by the text of the operative paragraph.

I. *Review of the proceedings and summary of facts* (paras. 1-21)

The Court outlined the successive stages of the proceedings as from the time at which the case had been brought before it (paras. 1-9) and set out the submissions of the Parties (paras. 10-11). It recalled that, on 23 August 1989, Guinea-Bissau had instituted proceedings against Senegal in respect of a dispute concerning the existence and validity of the arbitral award delivered on 31 July 1989 by an arbitration tribunal consisting of three arbitrators and established pursuant to an Arbitration Agreement concluded by the two States on 12 March 1985. The Court went on to summarize the facts of the case as follows (paras. 12-21):

On 26 April 1960, an Agreement by exchange of letters was concluded between France and Portugal for the purpose of defining the maritime boundary between the Republic of Senegal (at that time an autonomous State within the *Communauté* established by the Constitution of the French Republic of 1958) and the Portuguese Province of Guinea. The letter of France proposed, *inter alia*, as follows:

> "As far as the outer limit of the territorial sea, the boundary shall consist of a straight line drawn at 240° from the intersection of the prolongation of the land frontier and the low-water mark, represented for that purpose by the Cape Roxo lighthouse. As regards the contiguous zones and the continental shelf, the delimitation shall be

constituted by the prolongation in a straight line, in the same direction, of the boundary of the territorial seas."

The letter of Portugal expressed its agreement to this proposal.

After the accession to independence of Senegal and Portuguese Guinea, which became Guinea-Bissau, a dispute arose between those two States concerning the delimitation of their maritime areas. This dispute was the subject of negotiations between them from 1977 onward, in the course of which Guinea-Bissau insisted that the maritime areas in question be delimited without reference to the 1960 Agreement, disputing its validity and its opposability to Guinea-Bissau.

On 12 March 1985, the Parties concluded an Arbitration Agreement for submission of that dispute to an arbitration tribunal, article 2 of which Agreement reads, as follows:

> "The Tribunal is requested to decide in accordance with the norms of international law on the following questions:
>
> "1. Does the Agreement concluded by an exchange of letters on 26 April 1960, and which relates to the maritime boundary, have the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal?
>
> "2. In the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?"

Article 9 of the Arbitration Agreement provided, among other things, that the decision "shall include the drawing of the boundary line on a map".

An arbitration tribunal (hereinafter called "the Tribunal") was duly constituted under the Agreement, Mr. Mohammed Bedjaoui and Mr. André Gros having successively been appointed as arbitrators and Mr. Julio A. Barberis as President. On 31 July 1989, the Tribunal pronounced the Award, the existence and validity of which were challenged by Guinea-Bissau in the case before the Court.

The findings of the Tribunal were summarized by the Court as follows. The Tribunal concluded that the 1960 Agreement was valid and could be opposed to Senegal and to Guinea-Bissau (Award, para. 80); that it had to be interpreted in the light of the law in force at the date of its conclusion (ibid., para. 85); that:

> "the 1960 Agreement does not delimit those maritime spaces which did not exist at that date, whether they be termed exclusive economic zone, fishery zone or whatever . . .",

but that

> "the territorial sea, the contiguous zone and the continental shelf . . . are expressly mentioned in the 1960 Agreement and they existed at the time of its conclusion" (ibid.).

After examining "the question of determining how far the boundary line extends . . . today, in view of the evolution of the definition of the concept of 'continental shelf", the Tribunal explained that:

> "Bearing in mind the above conclusions reached by the Tribunal and the working of article 2 of the Arbitration Agreement, in the opinion of the Tribunal it is not called upon to reply to the second question.
>
> "Furthermore, in view of its decision, the Tribunal considered that there was no need to append a map showing the course of the boundary line." (ibid., para. 87.)

The operative clause of the Award was as follows:

> "For the reasons stated above, the Tribunal *decides* by two votes to one:
>
> "To reply as follows to the first question formulated in article 2 of the Arbitration Agreement: The Agreement concluded by an exchange of letters of 26 April 1960, and relating to the maritime boundary, has the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal with regard solely to the areas mentioned in that Agreement, namely the territorial sea, the contiguous zone and the continental shelf. The 'straight line drawn at 240° is a loxodromic line." (para. 88.)

Mr. Barberis, President of the Tribunal who, together with Mr. Gros, voted for the Award, appended a declaration to it, while Mr. Bedjaoui, who had voted against the Award, appended a dissenting opinion. The declaration of Mr. Barberis read, in particular, as follows:

> "I feel that the reply given by the Tribunal to the first question put by the Arbitration Agreement could have been more precise. I would have replied to that question as follows:
>
> " 'The Agreement concluded by an exchange of letters of 26 April 1960, and relating to the maritime boundary, has the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal with respect to the territorial sea, the contiguous zone and the continental shelf, but does not have the force of law with respect to the waters of the exclusive economic zone or the fishery zone. The "straight line drawn at 240°" mentioned in the Agreement of 26 April 1960 is a loxodromic line.'
>
> "This partially affirmative and partially negative reply is, in my view, the exact description of the legal position existing between the Parties. As suggested by Guinea-Bissau in the course of the present arbitration (Reply, p. 248), this reply would have enabled the Tribunal to deal in its Award with the second question put by the Arbitration Agreement. The *partially* negative reply to the first question would have conferred on the Tribunal a *partial* competence to reply to the second, i.e., to do so to the extent that the reply to the first question would have been negative . . ."

On 31 July 1989, the Tribunal held a public sitting for delivery of the Award; Mr. Barberis, the President, and Mr. Bedjaoui were present, but not Mr. Gros. At that sitting, after the Award had been delivered, the representative of Guinea-Bissau indicated that, pending full reading of the documents and consultation with his Government, he reserved the position of Guinea-Bissau regarding the applicability and validity of the Award, which did not, in his opinion, satisfy the requirements laid down by agreement between the two Parties. After contacts between the Governments of the two Parties, in which Guinea-Bissau indicated its reasons for not accepting the Award, the proceedings were brought before the Court by Guinea-Bissau.

II. *Question of the jurisdiction of the Court, of the admissibility of the Application and the possible effect of the absence of an arbitrator from the meeting at which the Award was delivered* (paras. 22-29)

The Court first considered its jurisdiction. In its Application, Guinea-Bissau founded the jurisdiction of the Court on "the declarations by which the Republic of Guinea-Bissau and the Republic of Senegal have respectively accepted the jurisdiction of the Court under the conditions set forth in Article 36, paragraph 2, of the Statute" of the Court. Those declarations had been deposited with the Secretary-General of the United Nations, in the case of Senegal on 2 December 1985, and in the case of Guinea-Bissau on 7 August 1989. Guinea-Bissau's declaration contained no reservation. Senegal's declaration, which replaced its previous declaration, of 3 May 1985, provided among other things that:

"Senegal may reject the Court's competence in respect of:

– Disputes in regard to which the parties have agreed to have recourse to some other means of settlement . . .",

and specified that it applied only to "all legal disputes arising after the present declaration . . .

Senegal observed that if Guinea-Bissau were to challenge the decision of the Tribunal on the merits, it would be raising a question excluded from the Court's jurisdiction by the terms of Senegal's declaration. According to Senegal, the dispute concerning the maritime delimitation was the subject of the Arbitration Agreement of 12 March 1985 and consequently fell into the category of disputes "in regard to which the Parties have agreed to have recourse to some other method of settlement". Furthermore, in the view of Senegal, that dispute arose before 2 December 1985, the date on which Senegal's acceptance of the compulsory jurisdiction of the Court became effective, and was thus excluded from the category of disputes "arising after" that declaration.

However, the Parties were agreed that there was a distinction between the substantive dispute relating to maritime delimitation, and the dispute relating to the Award rendered by the Tribunal, and that only the latter dispute, which arose after the Senegalese declaration, was the subject of the proceedings before the Court. Guinea-Bissau also took the position, which Senegal accepted, that those proceedings were not intended by way of appeal from the Award or as an application for revision

of it. Thus, both Parties recognized that no aspect of the substantive delimitation dispute was involved. On that basis, Senegal did not dispute that the Court had jurisdiction to entertain the Application under Article 36, paragraph 2, of the Statute. In the circumstances of the case, the Court regarded its jurisdiction as established and emphasized that, as the Parties were both agreed, the proceedings alleged the inexistence and nullity of the Award rendered by the Tribunal and were not by way of appeal from it or application for revision of it.

The Court then considered a contention by Senegal that Guinea-Bissau's Application was inadmissible in so far as it sought to use the declaration of President Barberis for the purpose of casting doubt on the validity of the Award. Senegal argued in particular that that declaration was not part of the Award, and therefore that any attempt by Guinea-Bissau to make use of it for that purpose "must be regarded as an abuse of process aimed at depriving Senegal of the rights belonging to it under the Award".

The Court considered that Guinea-Bissau's Application had been properly presented in the framework of its right to have recourse to the Court in the circumstances of the case. Accordingly it did not accept Senegal's contention that Guinea-Bissau's Application, or the arguments used in support of it, amounted to an abuse of process.

Guinea-Bissau contended that the absence of Mr. Gros from the meeting of the Tribunal at which the Award had been pronounced amounted to a recognition that the Tribunal had failed to resolve the dispute, that this had been a particularly important meeting of the Tribunal and that the absence of Mr. Gros had lessened the Tribunal's authority. The Court noted that it was not disputed that Mr. Gros participated in the voting when the Award was adopted. The absence of Mr. Gros from that meeting could not have affected the validity of the Award which has already been adopted.

III. *Question of the inexistence of the Award* (paras. 30-34)

In support of its principal contention that the Award was inexistent, Guinea-Bissau claimed that the Award was not supported by a real majority. It did not dispute the fact that the Award was expressed to have been adopted by the votes of President Barberis and Mr. Gros; it contended however that President Barberis's declaration contradicted and invalidated his vote, thus leaving the Award unsupported by a real majority. In this regard Guinea-Bissau drew attention to the terms of the operative clause of the Award and to the language advocated by President Barberis in his declaration.

The Court considered that, in putting forward this formulation, what President Barberis had had in mind was that the Tribunal's answer to the first question "could have been more precise"—to use his own words—not that it had to be more precise in the sense indicated in his formulation, which was, in his view, a preferable one, not a necessary one. In the opinion of the Court, the formulation disclosed no contradiction with that of the Award.

Guinea-Bissau also drew attention to the fact that President Barberis expressed the view that his own formulation "would have enabled the Tribunal to deal in its Award with the second question put by the Arbitration Agreement" and that the Tribunal would in consequence "have been competent to delimit the waters of the exclusive economic zone or the fishery zone between the two countries", in addition to the other areas. The Court considered that the view expressed by President Barberis, that the reply which he would have given to the first question would have enabled the Tribunal to deal with the second question, represented, not a position taken by him as to what the Tribunal was required to do, but only an indication of what he considered would have been a better course. His position therefore could not be regarded as standing in contradiction with the position adopted by the Award.

Furthermore, even if there had been any contradiction, for either of the two reasons relied on by Guinea-Bissau, between the view expressed by President Barberis and that states in the Award, the Court noted that such contradiction could not prevail over the position which President Barberis had taken when voting for the Award. In agreeing to the Award, he definitively agreed to the decisions, which it incorporated, as to the extent of the maritime areas governed by the 1960 Agreement, and as to the Tribunal not being required to answer the second question in view of its answer to the first. The Court added that, as the practice of international tribunals showed, it sometimes happened that a member of a tribunal voted in favour of a decision of the tribunal even though he might individually have been inclined to prefer another solution. The validity of his vote remained unaffected by the expression of any such differences in a declaration or separate opinion of the member concerned, which was therefore without consequence for the decision of the tribunal.

Accordingly, in the opinion of the Court, the contention of Guinea-Bissau that the Award was inexistent for lack of a real majority could not be accepted.

IV. *Question of the nullity of the Award* (paras. 35-36)

Subsidiarily, Guinea-Bissau maintained that the Award was, as a whole, null and void, on the grounds of *excès de pouvoir* and of insufficiency of reasoning. Guinea-Bissau observed that the Tribunal had not replied to the second question put in article 2 of the Arbitration Agreement, and had not appended to the Award the map provided for in article 9 of that Agreement. It was contended that these two omissions constituted an *excès de pouvoir*. Furthermore, Guinea-Bissau maintained that the Tribunal had given no reasons for its decision not to proceed to the second question, for not producing a single delimitation line, and for refusing to draw that line on a map.

1. *Absence of a reply to the second question*

(*a*) Guinea-Bissau suggested that, rather than deciding not to answer the second question put to it, the Tribunal had simply omitted, for lack of a real majority, to reach any decision at all on the issue. In this respect Guinea-Bissau stressed that what was referred to in the first

sentence of paragraph 87 of the Award as an "opinion of the Tribunal" on the point appeared in the statement of reasoning, not in the operative clause of the Award; that the Award did not specify the majority by which that paragraph had been adopted; and that only Mr. Gros could have voted in favour of this paragraph. In the light of the declaration made by President Barberis, Guinea-Bissau questioned whether any vote had been taken on paragraph 87. The Court recognized that the structure of the Award was, in that respect, open to criticism. Article 2 of the Arbitration Agreement had put two questions to the Tribunal. The latter was, according to article 9, to "inform the two Governments of its decision regarding the questions set forth in article 2". Consequently, the Court considered that it would have been normal to include in the operative part of the Award both the answer given to the first question and the decision not to answer the second. It was to be regretted that this course had not been followed. Nevertheless the Court was of the opinion that the Tribunal, when it adopted the Award, was not only approving the content of paragraph 88, but was also doing so for the reasons already stated in the Award and, in particular, in paragraph 87. It was clear from paragraph 87, taken in its context, and also from the declaration of President Barberis, that the Tribunal had decided by two votes to one that, as it had given an affirmative answer to the first question, it did not have to answer the second. The Court observed that, by so doing, the Tribunal had taken a decision: namely, not to answer the second question put to it. It concluded that the Award was not flawed by any failure to decide.

(*b*) Guinea-Bissau argued, secondly, that any arbitral award had, in accordance with general international law, to be a reasoned one. Moreover, according to article 9 of the Arbitration Agreement, the Parties had specifically agreed that "the Award shall state in full the reasons on which it is based". Yet, according to Guinea-Bissau, the Tribunal in this case had not given any reasoning in support of its refusal to reply to the second question put by the Parties or, at the very least, had given "wholly insufficient" reasoning. The Court observed that in paragraph 87 of the Award, referred to above, the Tribunal, "bearing in mind the . . . conclusions" that it had reached, together with "the wording of article 2 of the Arbitration Agreement", had taken the view that it was not called upon to reply to the second question put to it. The reasoning was brief, and could doubtless have been developed further. But the references in paragraph 87 to the Tribunal's conclusions and to the wording of article 2 of the Arbitration Agreement made it possible to determine, without difficulty, the reasons why the Tribunal had decided not to answer the second question. The Court observed that, by referring to the wording of article 2 of the Arbitration Agreement, the Tribunal had noted that, according to that article, it had been asked, first, whether the 1960 Agreement had "the force of law in the relations" between Guinea-Bissau and Senegal, and then, "in the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories" of the two countries. By referring to the conclusions that it had already reached, the Tribunal had noted that it had, in paragraphs 80 et seq. of the Award, found that the 1960 Agreement, in respect of which it had already determined the scope of its substantive validity, was "valid and can be opposed to Senegal and to Guinea- Bissau".

Having given an affirmative answer to the first question, and basing itself on the actual text of the Arbitration Agreement, the Tribunal had found as a consequence that it did not have to reply to the second question. The Court observed that that statement of reasoning, while succinct, was clear and precise, and concluded that the second contention of Guinea-Bissau had also to be dismissed.

(*c*) Thirdly, Guinea-Bissau challenged the validity of the reasoning thus adopted by the Tribunal on the issue whether it had been required to answer the second question:

(*i*) Guinea-Bissau first argued that the Arbitration Agreement, on its true construction, had required the Tribunal to answer the second question whatever might have been its reply to the first. In that connection, the Court first recalled that in the absence of any agreement to the contrary an international tribunal had the right to decide as to its own jurisdiction and had the power to interpret for that purpose the instruments which governed that jurisdiction. In the instant case, the Arbitration Agreement had confirmed that the Tribunal had the power to determine its own jurisdiction and to interpret the Agreement for that purpose. The Court observed that by its argument set out above, Guinea-Bissau was in fact criticizing the interpretation in the Award of the provisions of the Arbitration Agreement which had determined the Tribunal's jurisdiction, and proposing another interpretation. However, the Court did not have to enquire whether or not the Arbitration Agreement could, with regard to the Tribunal's competence, have been interpreted in a number of a ways, and, if so, to consider which would have been preferable. The Court was of the opinion that by proceeding in that way it would be treating the request as an appeal and not as a *recours en nullité*. The Court could not act in that way in the case before it. The Court had simply to ascertain whether by rendering the disputed Award the Tribunal had acted in manifest breach of the competence conferred on it by the Arbitration Agreement, either by deciding in excess of, or by failing to exercise, its jurisdiction. Such manifest breach might have resulted from, for example, the failure of the Tribunal properly to apply the relevant rules of interpretation to the provisions of the Arbitration Agreement which had governed its competence. The Court observed that an arbitration agreement was an agreement between States which had to be interpreted in accordance with the general rules of international law governing the interpretation of treaties. It then recalled the principles of interpretation laid down by its case-law and observed that those principles were reflected in articles 31 and 32 of the Vienna Convention on the Law of Treaties, which might in many respects be considered as a codification of existing customary international law on that point. The Court also noted that when States signed an arbitration agreement, they were concluding an agreement with a very specific object and purpose: to entrust an arbitration tribunal with the task of settling a dispute in accordance with the terms agreed by the parties. In the performance of the task entrusted to it, the tribunal had to conform to those terms.

The Court observed that, in the instant case, article 2 of the Arbitration Agreement had presented a first question concerning the 1960 Agree-

ment, and then a second question relating to delimitation. A reply had to be given to the second question "in event of a negative answer to the first question". The Court noted that those last words, which had originally been proposed by Guinea-Bissau itself, were categorical. It went on to examine situations in which international judicial bodies had been asked to answer successive questions made conditional on each other or not. The Court noted that in fact in the present case the Parties could have used some such expression as that the Tribunal should answer the second question "taking into account" the reply given to the first, but they had not done so; they had directed that the second question should be answered only "in the event of a negative answer" to that first question. Relying on various elements of the text of the Arbitration Agreement, Guinea-Bissau nevertheless considered that the Tribunal had been required to delimit by a single line the whole of the maritime areas appertaining to one or the other State. As, for the reasons given by the Tribunal, its answer to the first question put in the Arbitration Agreement could not have led to a comprehensive delimitation, it followed, in Guinea-Bissau's view, that, notwithstanding the prefatory words to the second question, the Tribunal had been required to answer that question and to effect the overall delimitation desired by both Parties.

After recalling the circumstances in which the Arbitration Agreement had been drawn up, the Court noted that the two questions had a completely different subject-matter. The first concerned the issue whether an international agreement had the force of law in the relations between the Parties; the second was directed to a maritime delimitation in the event that that agreement did not have such force. Senegal had been counting on an affirmative answer to the first question, and concluded that the straight line on a bearing of 240°, adopted by the 1960 Agreement, would constitute the single line separating the whole of maritime areas of the two countries. Guinea-Bissau had been counting on a negative answer to the first question and had concluded that a single dividing line for the whole of the maritime areas of the two countries would have been fixed *ex novo* by the Tribunal in reply to the second question. The two States had intended to obtain a delimitation of the whole of their maritime areas by a single line. But Senegal had counted on achieving that result through an affirmative answer to the first question, and Guinea-Bissau through a negative answer to that question. The Court noted that no agreement had been reached between the Parties as to what should happen in the event of an affirmative answer leading only to a partial delimitation, and as to what might be the task of the Tribunal in such case, and that the *travaux préparatoires* accordingly confirmed the ordinary meaning of article 2. The Court considered that that conclusion was not at variance with the circumstance that the Tribunal adopted as its title "Arbitration Tribunal for the Determination of the Maritime Boundary: Guinea-Bissau/Senegal", or with its definition, in paragraph 27 of the Award, of the "sole object of the dispute" as being one relating to "the determination of the maritime boundary between the Republic of Senegal and the Republic of Guinea-Bissau, a question which they have not been able to settle by means of negotiation . . ." In the opinion of the Court, that title and that definition were to be read in the light of the Tribunal's conclusion, which the Court shared,

that, while the Tribunal's mandate had included the making of a delimitation of all the maritime areas of the Parties, this had fallen to be done only under the second question and "in the event of a negative answer to the first question". The Court noted, in short, that although the two States had expressed in general terms in the preamble to the Arbitration Agreement their desire to reach a settlement of their dispute, their consent thereto had only been given in the terms laid down by article 2 of the Arbitration Agreement. The Court concluded that consequently the Tribunal had not acted in manifest breach of its competence to determine its own jurisdiction by deciding that it was not required to answer the second question except in the event of a negative answer to the first, and that the first argument had to be rejected.

(ii) Guinea-Bissau then argued that the answer in fact given by the Tribunal to the first question had been a partially negative answer and that this had sufficed to satisfy the prescribed condition for entering into the second question. Accordingly, and as was to be shown by the declaration of President Barberis, the Tribunal had, it was said, been both entitled and bound to answer the second question.

The Court observed that Guinea-Bissau could not base its arguments upon a form of words (that of President Barberis) which had not in fact been adopted by the Tribunal. The Tribunal had found, in reply to the first question, that the 1960 Agreement had the force of law in the relations between the Parties, and at the same time it defined the substantive scope of that Agreement. Such an answer had not permitted of a delimitation of the whole of the maritime areas of the two States, and a complete settlement of the dispute between them. It had achieved a partial delimitation. But that answer had none the less been both a complete and an affirmative answer to the first question. It accordingly had been possible for the Tribunal to find, without manifest breach of its competence, that its answer to the first question was not a negative one, and that it was therefore not competent to answer the second question. Therefore the Court rejected the contention of Guineau-Bissau that the entire Award was a nullity.

2. *Absence of a map*

Finally, Guinea-Bissau recalled that, according to article 9, paragraph 2, of the Arbitration Agreement, the decision of the Tribunal was to "include the drawing of the boundary line on a map", and that no such map was produced by the Tribunal. Guinea-Bissau contended that the Tribunal also did not give sufficient reasons for its decision on that point. The Award should, for those reasons, be held wholly null and void.

The Court considered that the reasoning of the Tribunal on this point was, once again, brief but sufficient to enlighten the Parties and the Court as to the reasons that had guided the Tribunal. It had found that the boundary line fixed by the 1960 Agreement was a loxodromic line drawn at 240° from the point of intersection of the prolongation of the land frontier and the low-water line, represented for that purpose by the Cape Roxo lighthouse. Since it had not replied to the second question, it had not had to define any other line. It had thus considered that there was no need

to draw on a map a line which was common knowledge, and the definitive characteristics of which it had specified.

In view of the wording of articles 2 and 9 of the Arbitration Agreement, and the positions taken by the Parties before the Tribunal, the Court noted that it was open to argument whether, in the absence of a reply to the second question, the Tribunal had been under an obligation to produce the map envisaged by the Arbitration Agreement. The Court had not however considered it necessary to enter into such a discussion. In the circumstances of the case, the absence of a map could not in any event constitute such an irregularity as would render the Award invalid. Accordingly the Court rejected this last argument of Guinea-Bissau.

V. *Final observations* (paras. 66-68)

The Court none the less took note of the fact that the Award had not brought about a complete delimitation of the maritime areas appertaining respectively to Guinea-Bissau and to Senegal. It however observed that that result was due to the wording of article 2 of the Arbitration Agreement.

The Court moreover took note of the fact that on 12 March 1991 Guinea-Bissau had filed in the Registry of the Court a second Application requesting the Court to adjudge and declare:

> "What should be, on the basis of the international law of the sea and of all the revelant elements of the case, including the future decision of the Court in the case concerning the arbitral '*award*' of 31 July 1989, the line (to be drawn on a map) delimiting all the maritime territories appertaining respectively to Guinea-Bissau and Senegal."

It also took note of the declaration made by the Agent of Senegal during the proceedings, according to which one solution:

> "would be to negotiate with Senegal, which has no objection to this, a boundary for the exclusive economic zone or, should it prove impossible to reach an agreement, to bring the matter before the Court".

Having regard to that Application and that declaration, and at the close of a long and difficult arbitral procedure and of the proceedings before the Court, the Court considered it highly desirable that the elements of the dispute that had not been settled by the Arbitral Award of 31 July 1989 should be resolved as soon as possible, as both Parties desired.

*

Operative paragraph (para. 69)

> "THE COURT,
>
> (1) Unanimously,
>
> *Rejects* the submission of the Republic of Guinea-Bissau that the Arbitral Award given on 31 July 1989 by the Arbitration Tribunal

established pursuant to the Agreement of 12 March 1985 between the Republic of Guinea-Bissau and the Republic of Senegal, is inexistent;

(2) By eleven votes to four,

Rejects the submission of the Repulic of Guinea-Bissau that the Arbitral Award of 31 July 1989 is absolutely null and void;

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Lachs, Ago, Schwebel, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen; *Judge ad hoc* Mbaye.

AGAINST: *Judges* Aguilar Mawdsley, Weeramantry, Ranjeva; *Judge ad hoc* Thierry.

(3) By twelve votes to three,

Rejects the submission of the Republic of Guinea-Bissau that the Government of Senegal is not justified in seeking to require the Government of Guinea-Bissau to apply the Arbitral Award of 31 July 1989; and, on the submission to that effect of the Republic of Senegal, *finds* that the Arbitral Award of 31 July 1989 is valid and binding for the Republic of Senegal and the Republic of Guinea-Bissau, which have the obligations to apply it.

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Lachs, Ago, Schwebel, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Ranjeva; *Judge ad hoc* Mbaye.

AGAINST: *Judges* Aguilar Mawdsley, Weeramantry; *Judge ad hoc* Thierry."

Judge Tarassov and Judge ad hoc Mbaye each appended a declaration to the Judgment,[309] Vice-President Oda and Judges Lachs, Ni and Shahabuddeen appended separate opinions;[310] Judges Aguilar Mawdsley and Ranjeva appended a joint dissenting opinion, and Judge Weeramantry and Judge ad hoc Thierry each a dissenting opinion.[311]

(v) *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*[312]

On 26 August 1991,[313] the President of the Court, having ascertained the views of the Parties, fixed 27 March 1992 as the time-limit for the filing of the Counter-Memorials. Both Counter-Memorials were duly filed within the prescribed time-limit.

(vi) *East Timor (Portugal v. Australia)*[314]

On 22 February 1991 the Government of the Portuguese Republic filed in the Registry of the Court an Application instituting proceedings against the Commonwealth of Australia in a dispute concerning "certain activities of Australia with respect to East Timor".

In order to establish the basis of the Court's jurisdiction, Portugal referred, in its Application, to the Declarations made by the two States under Article 36, paragraph 2, of the Statute of the Court.

It claimed that Australia, by negotiating, with Indonesia, an "agreement relating to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap' ", signed on 11 December 1989, by the "ratification, and the initiation of the performance" of that agreement, by the "related internal legislation", by the "negotiation of the delimitation of that shelf", and by the "exclusion of any negotiation on those matters with Portugal", had caused "particularly serious legal and moral damage to the people of East Timor and to Portugal, which will become material damage also if the exploitation of hydrocarbon resources begins".

Portugal requested the Court:

"(1) To adjuge and declare that, first, the rights of the people of East Timor to self-determination, to territorial integrity and unity (as defined in paras. 5 and 6 of the present Application) and to permanent sovereignty over its wealth and natural resources and, secondly, the duties, powers and rights of Portugal as the administering Power of the Territory of East Timor are opposable to Australia, which is under an obligation not to disregard them, but to respect them.

(2) To adjudge and declare that Australia, inasmuch as in the first place it has negotiated, concluded and initiated performance of the agreement referred to in paragraph 18 of the statement of facts, has taken internal legislative measures for the application thereof, and is continuing to negotiate, with the State party to that agreement, the delimitation of the continental shelf in the area of the 'Timor Gap'; and inasmuch as it has furthermore excluded any negotiation with the administering Power with respect to the exploration and exploitation of the continental shelf in that same area; and, finally, inasmuch as it contemplates exploring and exploiting the subsoil of the sea in the 'Timor Gap' on the basis of a plurilateral title to which Portugal is not a party (each of these facts sufficing on its own):

(*a*) has infringed and is infringing the right of the people of East Timor to self-determination, to territorial integrity and unity and its permanent sovereignty over its natural wealth and resources, and is in breach of the obligation not to disregard but to respect that right, that integrity and that sovereignty;

(*b*) has infringed and is infringing the powers of Portugal as the administering Power of the Territory of East Timor, is impeding the fulfilment of its duties to the people of East Timor and to the international community, is infringing the right of Portugal to fulfil its responsibilities and is in breach of the obligation not to disregard but to respect those powers and duties and that right;

(*c*) is contravening Security Council resolutions 384 (1974) and 389 (1975) and, as a consequence, is in breach of the obligation to accept and carry out Security Council resolutions laid down by Article 25 of the Charter of the United Nations and, more generally, is in breach of the obligation incumbent on Member States to co-operate in good faith with the United Nations;

"(3) To adjudge and declare that, inasmuch as it has excluded and is excluding any negotiation with Portugal as the administering Power of the Territory of East Timor, with respect to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap', Australia had failed and is failing in its duty to negotiate in order to harmonize the respective rights in the event of a conflict of rights or of claims over maritime areas.

"(4) To adjudge and declare that, by the breaches indicated in paragraphs 2 and 3 of the present submissions, Australia has incurred international responsibility and has caused damage, for which it owes reparation to the people of East Timor and to Portugal, in such form and manner as may be indicated by the Court.

"(5) To adjudge and declare that Australia is bound, in relation to the people of East Timor, to Portugal and to the international community, to cease from all breaches of the rights and international norms referred to in paragraphs 1, 2 and 3 of the present submissions and in particular, until such time as the people of East Timor shall have exercised its right to self-determination, under the conditions laid down by the United Nations:

(*a*) to refrain from any negotiation, signature or ratification of any agreement with a State other than the administering Power concerning the delimitation, and the exploration and exploitation, of the continental shelf, or the exercise of jurisdiction over that shelf, in the area of the 'Timor Gap';

(*b*) to refrain from any act relating to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap' or to the exercise of jurisdiction over that shelf, on the basis of any plurilateral title to which Portugal, as the administering Power of the Territory of East Timor, is not a party."

By an Order of 3 May 1991,[315] the President of the Court having ascertained the views of the Parties at a meeting with their Agents held on 2 May 1991, fixed the following time-limits: 18 November 1991 for the filing of the Portuguese Memorial and 1 June 1992 for the Australian Counter-Memorial. Both the Memorial and the Counter-Memorial were filed within the prescribed time-limits.

Portugal chose Mr. António de Arruda Ferrer-Correia and Australia Sir Ninian Stephen to sit as judges *ad hoc*.

(vii) *Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal)*[316]

On 12 March 1991, the Government of the Republic of Guinea-Bissau filed in the Registry of the Court an Application instituting proceedings against the Republic of Senegal in a dispute concerning the delimitation of all the maritime territories between the two States. Guinea-Bissau cited as bases for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

In its Application, Guinea-Bissau recalled that, by an Application dated 23 August 1989, it referred to the Court a dispute concerning the existence and validity of the Arbitral Award made on 31 July 1989 by the Arbitration Tribunal formed to determine the maritime boundary between the two States.

Guinea-Bissau claimed that the objective of the request laid before the Arbitration Tribunal was the delimitation of the maritime territories appertaining respectively to one and the other State. According to Guinea-Bissau, the decision of the Arbitration Tribunal of 31 July 1989, however, did not make it possible to draw a definitive delimitation of all the maritime areas over which the Parties had rights. Moreover, whatever the outcome of the proceedings pending before the Court, a real and definitive delimitation of all the maritime territories between the two States would still not be realized.

The Government of Guinea-Bissau asked the Court to adjudge and declare:

> "What should be, on the basis of the international law of the sea and of all the relevant elements of the case, including the future decision of the Court in the case concerning the Arbitral *'award'* of 31 July 1989, the line (to be drawn on a map) delimiting all the maritime territories appertaining respectively to Guinea-Bissau and Senegal."

In its judgment of 12 November 1991 in the case concerning the *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*,[317] the Court took note of the filing of a second Application but added:

> "67. ...
>
> "It has also taken note of the declaration made by the Agent of Senegal in the present proceedings, according to which one solution:
>
> > 'would be to negotiate with Senegal, which has no objection to this, a boundary for the exclusive economic zone or, should it prove impossible to reach an agreement, to bring the matter before the Court'.
>
> "68. Having regard to that Application and that declaration, and at the close of a long and difficult arbitral procedure and of these proceedings before the Court, the Court considers it highly desirable that the elements of the dispute that were not settled by the Arbitral Award of 31 July 1989 be resolved as soon as possible, as both Parties desire."

(viii) *Passage through the Great Belt (Finland v. Denmark)*[318]

On 17 May 1991, the Republic of Finland filed in the Registry of the Court an Application instituting proceedings against the Kingdom of Denmark in respect of a dispute concerning the question of passage of oil rigs through the Great Belt (Storebælt—one of the three straits linking the Baltic to the Kattegat and thence to the North Sea). Finland cited as bases

for the Courts jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

In its Application, Finland contended that there was no foundation in international law for the unilateral exclusion by Denmark, through the projected construction of a "high-level bridge . . . 65 metres above mean sea level", of the passage between the Baltic and the North Sea by vessels such as drill ships and oil rigs or other existing or reasonably foreseeable ships with a height of 65 metres or above to and from Finnish shipyards and ports. Such exclusion allegedly violated Finland's rights in respect of free passage through the Great Belt as established by the relevant conventions and customary international law. Finland recognized that Denmark was fully entitled, as the territorial sovereign, to take measures to improve its internal and international traffic connections, but contended that Denmark's entitlement to take such measures was necessarily limited by the established rights and interests of all States, and of Finland in particular, in the maintenance of the legal regime of free passage through the Danish straits. In Finland's view, these rights had been ignored by Denmark's refusal to enter into negotiations with Finland in order to find a solution and by its insistence that the planned bridge project be completed without modification.

Accordingly, the Republic of Finland, reserving its right to modify or to add to its submissions and in particular its right to claim compensation for any damage or loss arising from the bridge project, asked the Court to adjudge and declare:

> "(*a*) that there is a right of free passage through the Great Belt which applies to all ships entering and leaving Finnish ports and shipyards;
>
> "(*b*) that this right extends to drill ships, oil rigs and reasonably foreseeable ships;
>
> "(*c*) that the construction of a fixed bridge over the Great Belt as currently planned by Denmark would be incompatible with the right of passage mentioned in subparagraphs (*a*) and (*b*) above;
>
> "(*d*) that Denmark and Finland should start negotiations, in good faith, on how the right of free passage, as set out in subparagraphs (*a*) to (*c*) above, shall be guaranteed."

On 23 May 1991, Finland filed in the Registry a request for the indication of provisional measures, contending that "construction work for the East Channel bridge would prejudice the very outcome of the dispute"; that "the object of the Application relates precisely to the right of passage which the completion of the bridge project in its planned form will effectively deny"; and that "in particular, the continuation of the construction work prejudices the negotiating result which the Finnish submissions in the Application aim to attain".

Finland accordingly requested the Court to indicate the following provisional measures:

"(1) Denmark should, pending the decision by the Court on the merits of the present case, refrain from continuing or otherwise proceeding with such construction works in connection with the planned bridge project over the East Channel of the Great Belt as would impede the passage of ships, including drill ships and oil rigs, to and from Finnish ports and shipyards; and

(2) Denmark should refrain from any other action that might prejudice the outcome of the present proceedings."

Finland chose Mr. Bengt Broms and Denmark Mr. Paul Henning Fischer to sit as judges ad hoc.

Between 1 and 5 July 1991, the Court, at six public sittings, heard the oral observations of both Parties on the request for provisional measures.

At a public sitting held on 29 July 1991, the Court read the Order on the request for provisional measures filed by Finland,[319] in which it found that "the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures". Judge Tarassov appended a declaration,[320] and Vice President Oda, Judge Shahabuddeen and Judge ad hoc Broms appended separate opinions to the Order.[321]

By an Order of 29 July 1991,[322] the President of the Court, having ascertained the views of the Parties at a meeting with their Agents held on the same day, fixed the following time-limits: 30 December 1991 for the filing of the Memorial of Finland, and 1 June 1992 for the filing of the Counter-Memorial of Denmark.

(ix) *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*[323]

On 8 July 1991, the Government of the State of Qatar filed in the Registry of the Court an Application instituting proceedings against the Government of the State of Bahrain:

"in respect of certain existing disputes between them relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States".

Qatar claimed that its sovereignty over the Hawar islands was well founded on the basis of customary international law and applicable local practices and customs. It had therefore continuously opposed a decision announced by the British Government in 1939, during the time of the British presence in Bahrain and Qatar (which came to an end in 1971), that the islands belonged to Bahrain. This decision was, in the view of Qatar, invalid, beyond the power of the British Government in relation to the two States, and not binding on Qatar.

With regard to the shoals of Dibal and Qit'at Jaradah, a further decision of the British Government in 1947 to delimit the seabed boundary between Bahrain and Qatar purported to recognize that Bahrain had "sovereign rights" in the areas of those shoals. In that decision the view was

expressed that the shoals should not be considered to be islands having territorial waters. Qatar had claimed and continued to claim that such sovereign rights as existed over the shoals belonged to Qatar; it also considered however that these were shoals and not islands. Bahrain claimed in 1964 that Dibal and Qit'at Jaradah were islands possessing territorial waters, and belonged to Bahrain, a claim rejected by Qatar.

With regard to the delimitation of the maritime areas of the two States, in the letter informing the Rulers of Qatar and Bahrain of the 1947 decision it was stated that the British Government considered that the line divided "in accordance with equitable principles" the seabed between Qatar and Bahrain, and that it was a median line based generally on the configuration of the coastline of the Bahrain main island and the peninsula of Qatar. The letter further specified two exceptions. One concerned the status of the shoals; the other that of the Hawar islands.

Qatar stated that it did not oppose that part of the delimitation line which the British Government stated was based on the configuration of the coastlines of the two States and was determined in accordance with equitable principles. It has been rejecting and still rejected the claim made in 1964 by Bahrain (which had refused to accept the above-mentioned delimitation by the British Government) of a new line delimiting the seabed boundary of the two States. Qatar based its claims with respect to delimitation on customary international law and applicable local practices and customs.

The State of Qatar therefore requested the Court:

"I. To adjudge and declare in accordance with international law:

(A) that the State of Qatar has sovereignty over the Hawar islands; and

(B) that the State of Qatar has sovereign rights over Dibal and Qit'at Jaradah shoals; and

"II. With due regard to the line dividing the seabed of the two States as described in the British decision of 23 December 1947, to draw in accordance with international law a single maritime boundary between the maritime areas of seabed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain."

In the Application, Qatar founded the jurisdiction of the Court upon certain agreements between the Parties stated to have been concluded in December 1987 and December 1990, the subject and scope of the commitment to jurisdiction being determined, according to Qatar, by a formula proposed by Bahrain to Qatar on 26 October 1988 and accepted by Qatar in December 1990.

By letters addressed to the Registrar of the Court on 14 July 1991 and 18 August 1991, Bahrain contested the basis of jurisdiction invoked by Qatar.

At a meeting held on 2 October 1991 to enable the President of the Court to ascertain their views, the Parties reached agreement as to the desirability of the proceedings being initially devoted to the questions of the Court's jurisdiction to entertain the dispute and the admissibility of the Application. The President accordingly made, on 11 October 1991, an Order[324] deciding that the written proceedings should first be addressed to those questions; in the same Order he fixed the following time-limits in accordance with a further agreement reached between the Parties at the meeting of 2 October: 10 February 1992 for the Memorial of Qatar, and 11 June 1992 for the Counter-Memorial of Bahrain.

B. CONTENTIOUS CASE BEFORE A CHAMBER

Land, Island and Maritime Frontier Dispute
(El Salvador/Honduras: Nicaragua intervening)[325]

At 50 public sittings, held between 15 April and 14 June 1991, the Chamber heard oral arguments by the two Parties, as well as Nicaragua's observations with respect to the subject-matter of its intervention and the two Parties' observations thereon. It also heard a witness, presented by El Salvador.

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6. INTERNATIONAL LAW COMMISSION[326]

FORTY-THIRD SESSION OF THE COMMISSION[327]

The International Law Commission held its forty-third session at Geneva from 29 April to 19 July 1991.

Regarding the topic "Jurisdictional immunities of States and their property", the Commission, on the basis of the recommendation of the Drafting Committee, adopted on second reading the final text of a set of 22 draft articles. It decided, in accordance with article 23 of its statute, to recommend the General Assembly that it should convene an international conference of plenipotentiaries to consider the draft articles and to conclude a convention on the subject. The Commission was of the view that the question of the settlement of disputes on which draft articles were proposed[328] could be dealt with by the above-mentioned international conference, if it considered that a legal mechanism on the settlement of disputes should be provided in connection with the draft articles.

As regards the topic "The law of the non-navigational uses of international watercourses", the Commission had before it the second part of the sixth report[329] and the seventh report.[330] The second part of the sixth report contained a chapter on settlement of disputes, which had been introduced at the last session but was not discussed for lack of time. At the conclusion of its deliberations the Commission adopted on first reading the draft articles on the subject and decided, in accordance with articles 16

and 21 of its statute, to transmit the draft articles to the Governments of the Member States for comments and observations.

With respect to the topic "Draft Code of Crimes against the Peace and Security of Mankind", the Commission had before it the ninth report of the Special Rapporteur.[331] At the conclusion of its discussion, the Commission adopted on first reading a complete set of draft articles on the topic and decided, in accordance with articles 16 and 21 of the statute of the Commission, that the draft should be transmitted to Governments for their comments and observations.

The topic "International liability for injurious consequences arising out of acts not prohibited by international law" was considered by the Commission on the basis of the seventh report of the Special Rapporteur,[332] which had been designed to re-evaluate the developments of the topic in the Commission. The debate of the Commission was focused on the principal issues of the topic in order to identify areas of agreement in the Commission and facilitate future work on the topic.

With regard to the topic "Relations between States and international organizations (second part of the topic)", the Commission had before it fifth[333] and sixth[334] reports of the Special Rapporteur. At the conclusion of its discussion, the Commission agreed to refer all the articles articles considered to the Drafting Committee.

On the topic "State responsibility", the Commission heard the presentation by the Special Rapporteur of his third report.[335] The report was not discussed for lack of time.

Consideration by the General Assembly

At its forty-sixth session, the General Assembly had before it the report of the International Law Commission on the work of its forty-third session.[336] By its resolution 46/54 of 9 December 1991,[337] adopted on the recommendation of the Sixth Committee,[338] the General Assembly took note of the report of the International Law Commission on the work of its forty-third session; expressed its appreciation to the Commission for the work accomplished at that session, in particular for the completion of the final draft articles on jurisdictional immunities of States and their property and the provisional draft articles on the law of the non-navigational uses of international watercourses and on the draft Code of Crimes against the Peace and Security of Mankind; invited the Commission, within the framework of the draft Code, to consider further and analyse the issues raised in its report on the work of its forty-second session[339] concerning the question of an international criminal jurisdiction, including proposals for the establishment of an international criminal court or other international criminal trial mechanism in order to enable the Assembly to provide guidance on the matter; recommended that, taking into account the comments of Governments, the Commission should continue its work on the topics in its current programme; and expressed its appreciation for the efforts of the Commission to improve its procedures and methods of work.

7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[340]

TWENTY-FOURTH SESSION OF THE COMMISSION[341]

The United Nations Commission on International Trade Law held its twenty-fourth session at Vienna from 10 to 28 June 1991.

With respect to international payments, the Commission had before it reports of the Working Group on International Payments on the work of its twenty-first[342] and twenty-second[343] sessions, a report of the Secretary-General containing a compilation of comments by Governments and international organizations on the draft text of the Model Law on International Credit Transfers[344] and a report of the Secretary-General containing a commentary on the draft Model Law prepared by the Secretariat.[345] At the conclusion of its discussion on the draft text of a Model Law, the Commission referred the text of articles 1 to 15 to the Drafting Group. The text of those articles as revised by the Drafting Group, as well as the text of articles 16 to 18 as they were submitted by the Working Group to the Commission, are contained in annex I to the Commission's report.[346]

With regard to the question of procurement, the Commission had before it the report of the Working Group on the work of its twelfth session.[347] The Commission expressed appreciation for the work performed by the Working Group so far and requested it to proceed with its work expeditiously.

In connection with the question of international countertrade, the Secretariat reported orally to the Commission that, in addition to draft chapter VII, "Fulfilment of countertrade commitment",[348] the following materials would be before the Working Group on International Payments at its forthcoming session: document A/CN.9/WG.IV/WP.51 and Add.1-7. The Commission took note with appreciation of the progress made in the preparation of a legal guide on countertrade.

Concerning the question of legal problems of electronic data interchange (EDI), the Commission had before it the report entitled "Electronic data interchange",[349] which described the current activities in the various organizations involved in the legal issues of EDI and analysed the contents of a number of standard interchange agreements already developed or being currently developed. The Commission expressed its appreciation for the report submitted to it. It was agreed that the legal issues of EDI would become increasingly important as the use of EDI developed and that the Commission should undertake work in that field. There was wide support for the suggestion that the Commission should undertake the preparation of a general framework identifying the legal issues and providing a set of legal principles and basic legal rules governing communication through EDI. The Commission agreed that, given the number of issues involved, the matter needed detailed consideration by a working group.

As regards the preparation of a standard communication agreement for worldwide use in international trade, support was given to the idea that

such a project might be appropriate for the Commission. However, divergent views were expressed as to whether the preparation of such a standard communications agreement should be undertaken as a priority item. After deliberation, the Commission decided that a session of the Working Group on International Payments would be devoted to identifying the legal issues involved and to considering possible statutory provisions, and that the Working Group would report to the Commission at its next session on the desirability and feasibility of undertaking further work such as the preparation of a standard communications agreement. The Commission also took note of the suggestion by the Secretariat to prepare a uniform law on the replacement of negotiable documents of title, and more particularly transport documents, by EDI messages.

In connection with the question of coordination of work, the Commission had before it a note by the Secretariat on current activities of international organizations related to the harmonization and unification of international trade.[350] The Commission noted with appreciation the efforts of the Secretariat to obtain information on the extent to which multilateral and bilateral development organizations might be involved in activities relating to the modernization of commercial law in developing countries.

With respect to training and assistance, the Commission had before it a note by the Secretariat that set out the activities that had been carried out during the prior year as well as possible future activities in that field.[351] The Commission expressed its appreciation to all those who had participated in the organization of UNCITRAL symposia and seminars and in particular to those States that had given financial assistance to the programme of seminars and symposia. The Commission also expressed its appreciation to the Secretariat for its efforts to conduct an increased programme of seminars and symposia.

The Commission also considered the state of signatures, ratifications, accessions and approvals of conventions that were the outcome of its work,[352] as well as the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[353] and the jurisdictions that had enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration. The Commission had before it a note by the Secretariat on the status of those conventions and of the Model Law.[354]

Consideration by the General Assembly

At its forty-sixth session, the General Assembly, in its resolution 46/56 A of 9 December 1991,[355] adopted on the recommendation of the Sixth Committee,[356] took note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its twenty-fourth session;[357] took note of the successful conclusion of the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade, held at Vienna from 2 to 19 April 1991, which had resulted in the adoption of the United Nations Conventions on the Liability of Operators of Transport Terminals in International Trade;[358] reaffirmed the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade

law, to coordinate legal activities in that field in order to avoid duplication of effort and to promote efficiency, consistency and coherence in the unification and harmonization of international trade law and, in that connection, recommended that the Commission, through its secretariat, should continue to maintain close cooperation with the other international organs and organizations, including regional organizations, active in the field of international trade law; called upon the Commission to continue to take account, as appropriate, of the relevant provisions of the resolutions concerning the new international economic order, as adopted by the General Assembly at its sixth[359] and seventh[360] special session; reaffirmed the importance, in particular for developing countries, of the work of the Commission concerned with training and assistance in the field of international trade law and the desirability for it to sponsor seminars and symposia to provide such training and assistance; and commended the Commission on its decision to organize, as a first step in the preparation of its programme of activities for the United Nations Decade of International Law, a Congress on International Trade Law during the last week of the twenty-fifth session of the Commission, to be held in New York from 4 to 22 May 1992.[361] Furthermore, by its resolution 46/56 B, also of 9 December 1991,[362] adopted on the recommendation of the Sixth Committee,[363] the General Assembly took note of the report of the Secretary-General on possible ways of assisting developing countries to attend meetings of UNCITRAL,[364] requested the Fifth Committee, in order to ensure full, participation by all Member States, to consider granting travel assistance, within existing resources, to the least developed countries that were members of the Commission, as well as, on an exceptional basis, to other developing countries that were members of the Commission, at their request, in consultation with the Secretary-General, to enable them to participate in the sessions of the Commission and its working groups.

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8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY AD HOC LEGAL BODIES

(*a*) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

By its resolution 46/50 of 9 December 1991,[365] adopted on the recommendation of the Sixth Committee,[366] the General Assembly approved the guidelines and recommendations contained in section III of the report of the Secretary-General[367] and adopted by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law; authorized the Secretary-General to carry out in 1992 and 1993 the activities specified in his report; expressed its appreciation to the Secretary-General for his constructive efforts to promote training and assistance in international law within the framework of the Programme; welcomed, in particular, the joint

efforts described in the report of the Secretary-General, and undertaken by the Codification Division of the Office of Legal Affairs and the secretariat of the Programme as well as by the International Court of Justice to publish in a single volume in all official languages of the Organization, and within the existing overall level of appropriations, the summaries of the judgements and advisory opinions of the Court (1949-1990) as provided by the Registry of the Court, and to update that publication in subsequent years; welcomed the efforts undertaken by the Office of Legal Affairs of the Secretariat to bring up to date the United Nations *Treaty Series* and the *United Nations Juridical Yearbook*; expressed its appreciation to UNESCO for its participation in the Programme, and in particular for the publication of *International Law: Achievements and Prospects*; and urged all States, and relevant international organizations, whether regional or universal, to make all possible efforts to implement the goals and carry out the activities contemplated in section IV of the programme for the activities for the first term (1990-1992)[368] of the United Nations Decade of International Law, dealing with the encouragement of the teaching, study, dissemination and wider appreciation of international law.

(*b*) Measures to eliminate international terrorism

By its resolution 46/51 of 9 December 1991,[369] adopted on the recommendation of the Sixth Committee,[370] the General Assembly, taking note of the report of the Secretary-General,[371] once again unequivocally condemned, as criminal and unjustifiable, all acts, methods and practices of terrorism wherever and by whomever committed; called upon all States to fulfil their obligations under international law to refrain from organizing, instigating, assisting or participating in terrorist acts in other States, or acquiescing in or encouraging activities within their territory directed towards the commission of such acts; urged all States to fulfil their obligations under international law and take effective and resolute measures for the speedy and final elimination of international terrorism; appealed to all States that had not yet done so to consider becoming party to the international conventions relating to various aspects of international terrorism;[372] urged all States, as well as relevant United Nations organs, to contribute to the progressive elimination of the causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien domination and foreign occupation, that might give rise to international terrorism and might endanger international peace and security; welcomed the efforts undertaken by ICAO aimed at promoting universal acceptance of, and strict compliance with, international air security conventions, and welcomed also the recent adoption of the Convention on the Marking of Plastic Explosives for the Purpose of Detection; also requested the Secretary-General to seek the views of Member States on the proposals contained in his report or made during the debate on the item in the Sixth Committee,[373] and on the ways and means of enhancing the role of the United Nations and the relevant specialized agencies in combating international terrorism; and considered that nothing in the resolution could in

any way prejudice the right to self-determination, freedom and independence, as derived from the Charter of the United Nations, of peoples forcibly deprived of that right referred to in the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.[374]

(*c*) Progressive development of the principles and norms of international law relating to the new international economic order

By its resolution 46/52 of 9 December 1991,[375] adopted on the recommendation of the Sixth Committee,[376] the General Assembly, bearing in mind the analytical study[377] submitted to the General Assembly at its thirty-ninth session by the United Nations Institute for Training and Research (UNITAR) could constitute a valuable source of information, in common with the relevant resolutions adopted on the question by various United Nations organs, considered that the impact on developing countries of the existing economic situation should be examined; and decided to establish a working group of the Sixth Committee to develop the principles and norms of international law relating to the new international economic order.

(*d*) United Nations Decade of International Law

By its resolution 46/53 of 9 December 1991,[378] adopted on the recommendation of the Sixth Committee,[379] the General Assembly, recalling its resolution 44/23 of 17 November 1989, by which it declared the period 1990-1999 the United Nations Decade of International Law, and its resolution 45/40 of 28 November 1990, to which was annexed the programme for the activities to be commenced during the first term (1990-1992) of the Decade[380] expressed its appreciation to the Sixth Committee and its Working Group on the United Nations Decade of International Law for their work at the current session and requested the Working Group to continue to work at its forty-seventh session in accordance with its mandate and methods of work; invited all States and international organizations and institutions referred to in the programme to provide, update or supplement information on activities they had undertaken in implementation of the programme, as appropriate, to the Secretary-General, as well as to submit their views on possible activities for the next term of the Decade; and requested the Secretary-General to supplement his report on the implementation of the programme, as appropriate, with new information on activities of the United Nations relevant to the progressive development of international law and its codification and to submit it to the General Assembly on an annual basis.

(*e*) Consideration of the draft articles on jurisdictional immunities of States and their property

By its resolution 46/55 of 9 December 1991,[381] adopted on the recommendation of the Sixth Committee,[382] the General Assembly, noting that the International Law Commission had completed at its forty-third session the second reading of the draft articles on jurisdictional immunities of

States and their property,[383] invited States to submit their written comments and observations on the draft articles; and decided to establish at its forty-seventh session an open-ended working group of the Sixth Committee to examine, in the light of the written comments of Governments, as well as views expressed in debates at the forty-sixth session of the Assembly: (*a*) issues of substance arising out of the draft articles, in order to facilitate a successful conclusion of a convention through the promotion of general agreement; (*b*) the question of the convening of an international conference, to be held in 1994 or subsequently, to conclude a convention on jurisdictional immunities of States and their property.

(*f*) Consideration of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and of the draft optional protocols thereto

By its resolution 46/57 of 9 December 1991,[384] adopted on the recommendation of the Sixth Committee,[385] the General Assembly, recalling that the International Law Commission had completed at its forty-first session the second reading of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and had also prepared a draft optional protocol on the status of the courier and the bag of special missions and a draft optional protocol on the status of the courier and the bag of international organizations of a universal character,[386] expressed its satisfaction at the useful informal consultations that had been held at its forty-sixth session to study the draft articles as well as the question of how to deal further with those draft instruments with a view to facilitating the reaching of a generally acceptable decision in the latter respect, and took note of the report of the Vice-Chairman of the Sixth Committee who had presided over those consultations;[387] and decided that the informal consultations would be resumed at its forty-seventh session.

(*g*) Questions concerning the Charter of the United Nations and the strengthening of the role of the Organization

In accordance with General Assembly resolution 45/44 of 28 November 1990, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met at United Nations Headquarters from 4 to 22 February 1991.[388]

With respect to the topic of the maintenance of international peace and security, the Special Committee had before it the document entitled "Fact-finding by the United Nations in the field of the maintenance of international peace and security",[389] submitted by Belgium, Czechoslovakia, Germany, Italy, Japan, New Zealand and Spain, which was later revised,[390] as well as the "Proposal submitted by the Socialist People's Libyan Arab Jamahiriya, with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security".[391]

As a result of intensive work, the Special Committee completed its work on the draft Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security and decided to submit it to the General Assembly for consideration and adoption.[392] The Committee also had before it the working paper entitled "New issues for consideration in the Special Committee" submitted by the Union of Soviet Socialist Republics.[393] It was generally agreed that the working paper provided the Special Committee with a good basis for future work on its mandate. At the end of the discussion, the Chairman concluded that the Special Committee would continue its consideration of the Soviet working paper at its session the following year before deciding which of the proposals contained in it should be included in the agenda of the Committee. On 20 February 1991, the Union of Soviet Socialist Republics presented a specific working document relating to paragraph 1 (*a*) of the above-mentioned working paper on enhancement of cooperation between the United Nations and regional organizations.[394]

With regard to the topic of the peaceful settlement of disputes between States, the Special Committee, having taken note of the final progress report of the Secretary-General,[395] and having considered the final text of the draft handbook pursuant to paragraph 3 (*b*) (ii) of General Assembly resolution 45/44 of 28 November 1990, recommended to the General Assembly at its forty-sixth session the publication of the draft handbook, which was annexed to the report of the Special Committee.

Consideration of the General Assembly

By its resolution 46/58 of 9 December 1991,[396] adopted on the recommendation of the Sixth Committee,[397] the General Assembly took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization; expressed its appreciation to the Secretary-General for the completion of the Handbook on the Peaceful Settlement of Disputes between States[398] and requested him to publish and disseminate it widely in all the official languages of the United Nations; requested the Special Committee, at its next session: (*a*) to accord priority to the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations and, in that context, to consider the proposal on the enhancement of cooperation between the United Nations and regional organizations, as well as other specific proposals relating to the maintenance of international peace and security which might be submitted to the Special Committee at its next session; (*b*) to continue its work on the question of the peaceful settlement of disputes between States and, in that context, to consider: (i) the proposal on United Nations rules for the conciliation of disputes between States; (ii) other specific proposals relating to the question of the peaceful settlement of disputes between States that might be submitted to the Special Committee at its next session; (*c*) to consider various proposals with the aim of strengthening the role of the Organization and enhancing its effectiveness; and also requested the Special Committee to be mindful of the importance of reaching general agreement whenever that had significance for the outcome of its work.

(*h*) Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security

By its resolution 46/59 of 9 December 1991,[399] adopted on the recommendation of the Sixth Committee,[400] the General Assembly approved the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, the text of which was annexed to the resolution; and expressed its appreciation to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for its important contribution to the elaboration of the text of the Declaration.

ANNEX

Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security

The General Assembly,

Recalling the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[401] the Manila Declaration on the Peaceful Settlement of International Disputes,[402] the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations,[403] the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field,[404] and their provisions regarding fact-finding,

Emphasizing that the ability of the United Nations to maintain international peace and security depends to a large extent on its acquiring detailed knowledge about the factual circumstances of any dispute or situation, the continuance of which might threaten the maintenance of international peace and security (hereinafter, "disputes or situations"),

Recognizing that the full use and further improvement of the means for fact-finding of the United Nations could contribute to the strengthening of the role of the United Nations in the maintenance of international peace and security and promote the peaceful settlement of disputes, as well as the prevention and removal of threats to peace,

Desiring to encourage States to bear in mind the role that competent organs of the United Nations can play in ascertaining the facts in relation to disputes or situations,

Recognizing the particular usefulness of fact-finding missions that the competent United Nations organs may undertake in this respect,

Bearing in mind the experience and expertise acquired by the United Nations in the field of fact-finding missions,

Recognizing the need for States, in exercising their sovereignty, to co-operate with the relevant organs of the United Nations as regards fact-finding missions undertaken by them,

Seeking to contribute to the effectiveness of the United Nations, with a view to enhancing mutual understanding, trust and stability in the world,

Solemnly declares that:

I

1. In performing their functions in relation to the maintenance of international peace and security, the competent organs of the United Nations should endeavour

to have full knowledge of all relevant facts. To that end they should consider undertaking fact-finding activities.

2. For the purpose of the present Declaration fact-finding means any activity designed to obtain detailed knowledge of the relevant facts of any dispute or situation which the competent United Nations organs need to order to exercise effectively their functions in relation to the maintenance of international peace and security.

3. Fact-finding should be comprehensive, objective, impartial and timely.

4. Unless a satisfactory knowledge of all relevant facts can be obtained through the use of the information-gathering capabilities of the Security-General or other existing means, the competent organ of the United Nations should consider resorting to a fact-finding mission.

5. In deciding if and when to undertake such a mission, the competent United Nations organs should bear in mind that the sending of a fact-finding mission can signal the concern of the Organization and should contribute to building confidence and defusing the dispute or situation while avoiding any aggravation of it.

6. The sending of a United Nations fact-finding mission to the territory of any State requires the prior consent of that State, subject to the relevant provisions of the Charter of the United Nations.

II

7. Fact-finding missions may be undertaken by the Security Council, the General Assembly and the Secretary-General, in the context of their respective responsibilities for the maintenance of international peace and security in accordance with the Charter.

8. The Security Council should consider the possibility of undertaking fact-finding to discharge effectively its primary responsibility for the maintenance of international peace and security in accordance with the Charter.

9. The Security Council should, wherever appropriate, consider the possibility of providing in its resolutions for recourse to fact-finding.

10. The General Assembly should consider the possibility of undertaking fact-finding for exercising effectively its responsibilities under the Charter for the maintenance of international peace and security.

11. The General Assembly should, wherever appropriate, consider the possibility of providing for recourse to fact-finding in its resolutions relevant to the maintenance of international peace and security.

12. The Secretary-General should pay special attention to using the United Nations fact-finding capabilities at an early stage in order to contribute to the prevention of disputes and situations.

13. The Secretary-General, on his own initiative or at the request of the States concerned, should consider undertaking a fact-finding mission when a dispute or a situation exists.

14. The Secretary-General should prepare and update lists of experts in various fields who would be available for fact-finding missions. He should also maintain and develop, within existing resources, capabilities for mounting emergency fact-finding missions.

15. The Security Council and the General Assembly should, in deciding to whom to entrust the conduct of a fact-finding mission, give preference to the Security-General, who may, *inter alia*, designate a special representative or a group of experts reporting to him. Resort to an ad hoc subsidiary body of the Security Council or the General Assembly may also be considered.

16. In considering the possibility of undertaking a fact-finding mission, the competent United Nations organ should bear in mind other relevant fact-finding efforts, including those undertaken by the States concerned and in the framework of regional arrangements or agencies.

17. The decision by the competent United Nations organ to undertake fact-finding should always contain a clear mandate for the fact-finding mission and precise requirements to be met by its report. The report should be limited to a presentation of findings of a factual nature.

18. Any request by a State to a competent organ of the United Nations for the sending of a United Nations fact-finding mission to its territory should be considered without undue delay.

III

19. Any request by a competent organ of the United Nations for the consent of a State to receive a fact-finding mission within its territory should be given timely consideration by that State. That State should inform the organ of its decision without delay.

20. In the event a State decides not to admit a United Nations fact-finding mission to its territory, it should, if it deems it appropriate, indicate the reasons for its decision. It should also keep the possibility of admitting the fact-finding mission under review.

21. States should endeavour to follow a policy of admitting United Nations fact-finding missions to their territory.

22. States should cooperate with United Nations fact-finding missions and give them, within the limits of their capabilities, the full and prompt assistance necessary for the exercise of their functions and the fulfilment of their mandate.

23. Fact-finding missions should be accorded all immunities and facilities needed for discharging their mandate, in particular full confidentiality in their work and access to all relevant places and persons, it being understood that no harmful consequences will result to these persons. Fact-finding missions have an obligation to respect the laws and regulations of the State in which they exercise their functions; such laws and regulations should not however be applied in such a way as to hinder missions in the proper discharge of their functions.

24. The members of fact-finding missions, as a minimum, enjoy the privileges and immunities accorded to experts on missions by the Convention on the Privileges and Immunities of the United Nations. Without prejudice to their privileges and immunities, members of fact-finding missions have an obligation to respect the laws and regulations of the State in the territory in which they exercise their functions.

25. Fact-finding missions have an obligation to act in strict conformity with their mandate and perform their task in an impartial way. Their members have an obligation not to seek or receive instructions from any Government or from any authority other than the competent United Nations organ. They should keep the information acquired in discharging their mandate confidential even after the mission has fulfilled its task.

26. The States directly concerned should be given an opportunity, at all stages of the fact-finding process, to express their views in respect of the facts the fact-finding mission has been entrusted to obtain. When the results of fact-finding are to be made public, the view expressed by the States directly concerned should, if they so wish, also be made public.

27. Whenever fact-finding includes hearings, appropriate rules of procedure should ensure their fairness.

IV

28. The Secretary-General should monitor the state of international peace and security regularly and systematically in order to provide early warning of disputes or situations which might threaten international peace and security. The Secretary-General may bring relevant information to the attention of the Security Council and, where appropriate, of the General Assembly.

29. To this end, the Secretary-General should make full use of the information-gathering capabilities of the Secretariat and keep under review the improvement of these capabilities.

V

30. The sending of a United Nations fact-finding mission is without prejudice to the use of the States concerned of inquiry or any similar procedure or of any means of peaceful settlement of disputes agreed by them.

31. Nothing in the present Declaration is to be construed as prejudicing in any manner the provisions of the Charter.

(*i*) Additional protocol on consular functions to the Vienna Convention on Consular Relations

By its resolution 46/61 of 9 December 1991,[405] adopted on the recommendation of the Sixth Committee,[406] the General Assembly, taking note with appreciation of the report of the Secretary-General[407] containing the replies received from Member States and other States parties to the Vienna Convention on Consular Relations[408] concerning an additional protocol on consular functions to that Convention, decided to hold informal consultations during its forty-seventh session to examine the proposal concerning an additional protocol on consular functions to the above-mentioned Convention, particularly in the light of the views of States reflected in the report of the Secretary-General or expressed during the debate on the question in the Sixth Committee.

(*j*) Development and strengthening of good-neighbourliness between States

By its resolution 46/62 of 9 December 1991,[409] adopted on the recommendation of the Sixth Committee,[410] the General Assembly reaffirmed that, by acting as good neighbours, States could help to ensure that the ends for which the United Nations had been established were achieved; emphasized that States should act as good neighbours whether or not they were contiguous; called upon all States to keep in mind the need to act as good neighbours both in their dealings with other States and when taking decisions that could affect them; expressed the conviction that good-neighbourliness was best fostered by each State respecting the rule of law in its international relations, and by practical measures designed to promote good relations with other States; and decided that the question of development and strengthening of good-neighbourliness between States should continue to guide States as a goal to be pursued in their consideration of the issues before the United Nations, and noted that it could be considered in the future.

(*k*) Consideration of the draft articles on most-favoured-nation clauses

By its decision 46/416 of 9 December 1991,[411] adopted on the recommendation of the Sixth Committee,[412] the General Assembly, having noted with appreciation the valuable work done by the International Law Commission on the most-favoured-nation clauses, as well as the observations and comments of Member States, of organs of the United Nations, of specialized agencies and of interested intergovernmental organizations, decided to bring the draft articles on most-favoured-nation clauses, as contained in the report of the International Law Commission on the work of its thirtieth session,[413] to the attention of Member States and interested intergovernmental organizations for their consideration in such cases and to the extent that they deemed appropriate.

(*l*) Exploitation of the environment as a weapon in times of armed conflict and the taking of practical measures to prevent such exploitation

By its decision 46/417 of 9 December 1991,[414] adopted on the recommendation of the Sixth Committee,[415] the General Assembly took note that the protection of the environment in times of armed conflict was to be addressed at the Twenty-sixth International Conference on the Red Cross and Red Crescent; and decided to request the Secretary-General to report to the General Assembly at its forty-seventh session on activities undertaken in the framework of the International Red Cross with regard to that issue.

(*m*) Report of the Committee on Relations with the Host Country

In accordance with General Assembly resolution 45/46 of November 1990, the Committee on Relations with the Host Country continued its work, in conformity with General Assembly resolution 2819 (XXVI) of 15 December 1971. During the period under review, the Committee held six meetings and approved, *inter alia*, the following recommendations and conclusions: considering that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations was in the interest of the United Nations and all Member States, the Committee appreciated the efforts made by the host country for that purpose and was assured that all problems raised at its meetings would be duly settled in a spirit of cooperation and in accordance with international law; considering that the security of missions accredited to the United Nations and the safety of their personnel were indispensable for their effective functioning, the Committee appreciated the efforts of the host country to that end and anticipated that the host country would continue to take all measures necessary to prevent any interference with the functioning of missions; with a view to facilitating the course of justice, the Committee called upon the missions of Member States to cooperate as fully as possible with the federal and local United States

authorities in cases affecting the security of missions and their personnel; concerning travel regulations issued by the host country with regard to personnel of certain missions and staff members of the Secretariat of certain nationalities, the Committee took note of the positions of the affected Member States, of the Secretary-General and of the host country; the Committee appealed to the host country to review the measures relating to diplomatic vehicles with a view to responding to the needs of the diplomatic community, and to consult with the Committee on matters relating to transportation; and the Committee stressed the importance of the work of its newly established Working Group concerning problems of financial indebtedness and welcomed the cooperation of all interested parties. It reminded all permanent missions to the United Nations and their personnel of their responsibilities to meet their financial obligations. With a view to resolving the issues relating thereto, the Committee strongly supported the continuation of the Working Group's efforts to find a solution to the problem.

Consideration by the General Assembly

By its resolution 46/60 of 9 December 1991,[416] adopted on the recommendation of the Sixth Committee,[417] the General Assembly endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 76 of its report;[418] expressed its appreciation for the efforts made by the host country and hoped that outstanding problems raised at the meetings of the Committee would be duly resolved in a spirit of cooperation and in accordance with international law; urged the host country, in the light of the consideration by the Committee of travel regulations issued by the host country, to continue to bear in mind its obligations to facilitate the functioning of the United Nations and the missions accredited to it; and stressed the importance of a positive perception of the work of the United Nations, and urged that efforts be continued to build up public awareness by explaining, through all available means, the importance of the role played by the United Nations and the missions accredited to it in the strengthening of international peace and security.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION[419]

(*a*) The International Labour Conference (ILC), which held its 78th session at Geneva in June 1991, adopted a Convention and a Recommendation concerning working conditions in hotels, restaurants and similar establishments.[420]

(*b*) The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 7 to 20 March 1991 and presented its report.[421]

(*c*) Several representations were lodged under article 24 of the Constitution of the International Labour Organisation alleging non-observance of ratified Conventions by the following countries: Mauritania on the Protection of Wages Convention, 1949 (No. 95), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Employment Policy Convention, 1964 (No. 122);[422] and Iraq on the Protection of Wages Convention, 1949 (No. 95), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equality of Treatment (Social Security) Convention, 1962 (No. 118).[423]

(*d*) The Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organisation to examine the complaint concerning the non-observance by Nicaragua of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), met in February, June and November 1990 and adopted its report[424] which was noted by the Governing Body at its 250th session (May-June 1991).

(*e*) The Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organisation to examine the complaint concerning the non-observance by Romania of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), met in January 1990, July 1990, October 1990 and March 1991 and adopted its report[425] which was noted by the Governing Body at its 250th session (May-June 1991).

(*f*) The Governing Body, which met at Geneva, considered and adopted the following reports of its Committee on Freedom of Association: the 277th report[426] at its 249th session (February-March 1991); the 278th report[427] at its 250th session (May-June 1991); and the 279th and 280th reports[428] at its 251st session (November 1991).

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(a) *Constitutional and general legal matters*

(i) *Membership of regional economic integration organizations in FAO*

After considering the report of the FAO Council which had reviewed the proposals formulated by the Committee on Constitutional and Legal Matters and the Committee of Member Nations Established to Review the Proposed Amendments to the Basic Texts of the Organization to Allow for Membership of Regional Economic Integration Organizations in FAO as well as a Compromise Text prepared by the Chairman of the Commit-

tee of Member Nations, the Conference, at its twenty-sixth session held in November 1991, decided to amend the Basic Texts of FAO to allow for the membership of regional economic integration organizations (REIO) in FAO.

These amendments provide that REIOs constituted by sovereign States, a majority of which are member nations of FAO and to which its member States have transferred competence over a range of matters within the purview of FAO, including the authority to make decisions binding on its member States in respect of those matters, may apply for membership of FAO. The term "transfer of competence" in respect of a given subject includes the transfer of treaty-making power by member States and means that complete power with respect to that subject is transferred and that no residual power remains with the member States. An REIO wishing to become a member of FAO is required, at the time of application for membership, to submit a declaration of competence specifying the matters in respect of which competence has been transferred to it by its member States. There is a presumption that any competence in respect of which no declaration of transfer has been given to FAO lies with the member States. The amendments to the Basic Texts provide for the rights and obligations of REIOs that are accepted as members of FAO (member organizations) and set the modalities of the exercise of membership rights by member organizations and their Member States as follows:

(*a*) The exercise of membership rights by a member organization is on an alternative basis with its member States which are members of FAO;

(*b*) A member organization has the right to participate, within its competence, in all meetings of FAO and its bodies in which any of its member States is entitled to participate with the exception of committees of restricted membership specified in the General Rules of the Organization (GRO). The GRO provide that a member organization shall not participate in the Programme Committee, the Finance Committee, the Committee on Constitutional and Legal Matters, the Credentials Committee, the Nominations Committee and the General Committee of the biannual Conference and any other body of the Conference dealing with the internal working of the Conference as the Conference may decide;

(*c*) A member organization is not eligible for election or designation to any body of FAO on its own right nor does it vote for elective places. Furthermore, member organizations are not entitled to hold office in the Conference, the Council or any of their subsidiary bodies;

(*d*) A member organization may exercise a number of votes equal to the number of its member States which are entitled to vote at the meeting in question;

(*e*) Before any meeting, a member organization or its member States is required to indicate which, as between the member organization and its member States, is competent in respect of any of the specific questions to be considered in the meeting and which shall exercise the right to vote in respect of each particular agenda item;

(*f*) In cases where an agenda item covers matters in respect of which competence has been transferred to the member organization and matters which lie within the competence of its member States (mixed competence), both the member organization and its member States may participate in the discussions but, for the purposes of arriving at a decision, only the intervention of the party having the right to vote shall be taken into account;

(*g*) For quorum purposes, the delegation of a member organization counts to the extent that it is entitled to vote in the particular meeting;

(*h*) A member organization does not contribute to the budget of FAO but is required to pay a sum to be determined by the Conference to cover administrative and other expenses arising out of its membership.

Article XIV of the Constitution of FAO[429] was also amended to allow Member Organizations and other eligible REIOs to become parties to conventions and agreements concluded thereunder. The terms of participation and voting rights to be exercised by such organizations are to be defined in each such agreement. Where the organization becomes a party on its own, without the alternative participation of its member States, the organization will be restricted to exercise a single vote in any body established under the agreement.

By its resolution 7/91, the Conference adopted the amendments to the Basic Texts of the Organization.

(ii) *Change in the membership of the Organization*

The Conference, at its twenty-sixth session, admitted Estonia, Latvia and Lithuania to membership in FAO and Puerto Rico, as an associate member.

The European Economic Community was also admitted and thus became the first member organization of FAO, pursuant to the amendment to the Basic Texts adopted during the session.

South Africa also made an application for admission. The Conference decided that no action should be taken on that application at its twenty-sixth session but that the matter should be placed on the provisional agenda of the twenty-seventh session of the Conference.

(iii) *Cooperation Agreement between the African Development Bank, the African Development Fund and FAO*

In accordance with article XIII, paragraph 1, of the Constitution, the Conference confirmed the Cooperation Agreement and expressed the hope that it would be signed and implemented as soon as possible.

(iv) *Revision of Conference resolution 46/57*

In 1957, the Conference had adopted resolution 46/57 ("Principles and procedures which should govern conventions and agreements concluded under articles XIV and XV of the Constitution, and commissions and committees established under article VI of the Constitution").

The Conference, acknowledging the developments that had taken place since then, amended that resolution by Conference resolution 8/91 to allow for greater flexibility and autonomy to these bodies. These amendments may be summarized as follows:

1. Amendments to conventions and agreements concluded under article XIV of the Constitution are to be reported to the Council which has the power to disallow them if it finds that such amendments are inconsistent with the objectives and purposes of FAO or its Constitution. Amendments are no longer subjected to the prior approval of the Council or Conference; they are now operative until disallowed by the Council or Conference.

2. Relations between bodies established by conventions or agreements concluded under article XVI of the Constitution ("article XIV bodies") and other international organizations need no longer be dealt with by the Director-General.

3. In the case of article XIV bodies with autonomous budgets, recommendations or decisions not having financial, policy or programme implications for FAO may be transmitted directly to the members of the body concerned for their consideration or action whereas this had to be done previously through the Director-General.

4. The basic texts of article XIV bodies with autonomous budgets may specify that their Secretary be appointed by the Director-General after consultation with, or with the approval or concurrence of the members of the body concerned. Such appointments used to lie within the exclusive discretion of the Director-General.

5. It is no longer required, for article XIV bodies, that cooperative projects and autonomous budgets and programmes be submitted to the Council or the Conference prior to implementation.

6. Financial regulations of article XIV bodies are now required to be consistent with the Financial Regulations of FAO and must be reported to the Finance Committee which has the power to disallow them if it finds them to be inconsistent with the principles embodied therein. Previously, the financial regulations had to be approved by the Director-General subject to confirmation by the Council.

7. Rules of procedure of article XIV bodies must not be inconsistent with the convention or agreement creating them or with the Constitution of FAO. They no longer need to be submitted for approval to the Director-General.

(v) *Revision of the General Regulations of the World Food Programme and membership of the WFP Committee on Food Aid Policies*[430]

The Conference adopted, under Conference resolution 9/91, the Revised General Regulations of the World Food Programme (WFP) which allow a greater degree of administrative autonomy to WFP while preserving its legal status as a joint programme of the United Nations and FAO

and substantially maintaining the technical role of FAO in respect of WFP activities.

The Revised General Regulations enhance the role of the Committee on Food Aid Policies and Programmes (CFA) as the body responsible for the intergovernmental supervision and direction of the Programme, enlarge its composition from 30 to 42 members of which 27 are to be developing countries and 15 more economically developed states, to be elected half by the Economic and Social Council and half by the Council of FAO.

(vi) *Headquarters Agreement for the World Food Programme and Interpretation Agreements concerning FAO Headquarters Agreement*

An Agreement regarding the Headquarters of the World Food Programme was signed by the United Nations, FAO and the Italian Government on 15 March 1991.[431]

On the same date, two interpretation agreements of the FAO Headquarters Agreement and the new WFP Headquarters Agreement were concluded. They provide for the interpretation of certain of the provisions of the Headquarters Agreements of FAO and WFP, confirm the position with respect to immunity from jurisdiction of national courts and reaffirm the fact that the administration of the staff is governed exclusively by FAO's and WPF's internal laws and rules.

(vii) *Immunity of the Organization from legal process in Italy*

The Conference was informed that the Organization's immunity from legal process had been upheld by the Supreme Court of Italy (Corte di Cassazione) in a lawsuit brought against it in the Italian courts by a former staff member. The former staff member was contesting the immunity from national jurisdiction and arguing that the Italian courts had jurisdiction over the employment relationship between FAO and its staff and that the Italian labour laws were applicable to this relationship. At the time, only the ruling was available and the full judgement was expected in the following months.

(viii) *International Plant Protection Convention*

The revised text of the International Plant Protection Convention entered into force on 4 April 1991 and the Conference, at its twenty-sixth session, appealed again to all States not yet parties to adhere to it.

(b) *Activities of legal interest relating to commodities*

(i) *Hard fibres*

The Intergovernmental Group on Hard Fibres held its twenty-fifth Session in October 1991, at which it agreed to revise downward the indicative price for sisal fibre on the recommendation of the Subgroup of Sisal and Henequen Producing Countries. The Group also agreed to maintain unchanged the indicative price for sisal and henequen baler twines. It recommended further that the quota system should be maintained in

principle, although the global and national quotas should remain suspended. For abaca, the Group agreed that the indicative price range for the composite of three major grades of Philippine fibre should also remain unchanged. It decided, however, that the mechanism triggering automatic consultations between producers and consumers, when the indicator price was approaching either limit of the range, should remain suspended. Some consuming countries abstained from participating in the discussions on indicative price arrangements for fibres and twine.

(ii) *Jute, kenaf and allied fibres*

a. *Jute, kenaf and allied fibres*

The informal price arrangements operated under the auspices of the FAO Intergovernmental Group on Jute, Kenaf and Allied Fibres for these fibres were maintained in 1991. At its twenty-seventh Session in 1991, the Group agreed to maintain the prices of jute unchanged for the 1991/92 season (Bangladesh jute – US$ 400 +/– US$ 30 per metric ton, sight, for BWD grade, f.o.b. Chittagong/Chalna) and to increase those of kenaf to US$ 350 +/– US$ per metric ton.

b. *International commodity bodies*

Following the requests of the Director-General, the Common Fund for Commodities designated as eligible international commodity bodies the Groups on Hard Fibres, Bananas, Rice, Meat, Oilseeds, Oils and Fats, Tea and Citrus Fruits, the Subgroup on Hides and Skins and the Subcommittee on Fish Trade.

(c) *Activities of the Joint FAO/WHO Codex Alimentarius Commission in relation to food law*

At its nineteenth session, held in Rome from 1 to 10 July 1991, the Commission decided to amend the elaboration procedures for Codex standards and the acceptance procedures, so as to provide for notification of acceptance in cases where commodities conforming to Codex requirements might be freely distributed in the importing country.

The Commission also decided that existing regional standards should be converted to worldwide standards.

(d) *Legislative matters*

(i) *Activities connected with international meetings*

FAO participated in and provided contributions to the following international meetings:

Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity, second negotiating session, Nairobi, 25 February–6 March 1991;

International Union for the Protection of Industrial Property—Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants, Geneva, 4-19 March 1991;

International Symposium on the Argan Tree: Research and Future Prospects, Agadir, Morocco, 11-14 March 1991;

International Symposium on Comparative Environmental Law, Tokyo, 14-15 March 1991;

Preparatory Organizational and Legal Studies, Mekong Secretariat: Workshop 1: Financing of International Water Development Projects, Rome, 1-11 May, 1991; Workshop 2: National Water Law and Institutions. Hanoi, 1-8 October 1991;

Meeting of legal experts to examine the Draft Convention concerning Fisheries Cooperation among African States bordering the Atlantic Ocean, FAO, Rome, 27-30 May 1991;

Intergovernmental Negotiating Committee for a Convention on Biological Diversity, third negotiating session, Madrid, 24 June – 3 July 1991; fourth session, Nairobi, 23 September –2 October 1991; fifth session, Geneva, 25 November – 4 December 1991;

Ministerial Conference for Fisheries Cooperation among African States bordering the Atlantic Ocean, Dakar, 1-5 July 1991;

UNDP, International Institute for Hydraulic and Environmental Engineering, Symposium on a Strategy for Water Sector Capacity Building; Delft, the Netherlands, 3-5 June 1991;

Ministerial Conference on Maritime Cooperation between African States bordering the Atlantic Ocean, Dakar, 1-5 July 1991;

Preparatory Committee for the United Nations Conference on Environment and Development, third session, 12 August – 4 September 1991;

Second Joint FAO-WHO Consultation on Legal Aspects of Water Allocation and Wastewater Reuse, Geneva, 9-11 September 1991;

Expert Consultation on Harmonization of Quarantine Procedures, Rome, 13-19 June 1991;

Expert Consultation on Guidelines for the Introduction of Biological Control Agents, Rome, 17-19 September 1991;

Tenth World Forestry Congress—Organization of the Workshop on the Drafting and Implementation of Social Forestry Legislation, Paris, 23 September 1991;

Seventeenth Session of the Asia and Pacific Plant Protection Commission, Kuala Lumpur, 2-7 October 1991;

WHO Regional Workshop on Chemical Safety Legislation, Kuala Lumpur, 7-11 October 1991;

German Foundation for International Development, Workshop on New Trends and Policies in Irrigation Management, Colombo, 4-7 November 1991.

(ii) *Legislative assistance and advice*

Legal assistance and advice not involving field missions was furnished to Governments, agencies or educational centres, at their request, on a broad range of topics, including:

—Agrarian and rural land law;

—Animal, plant and food legislation;

—Forestry and wildlife legislation;

—Environmental legislation.

During 1991, legislative assistance and advice in the field were given to various countries on the following topics:

a. *Agrarian legislation*

Benin (rural institutions), Burundi (rural and law), Congo (agrarian and rural land law), Equatorial Guinea (natural resources law), Grenada (farmers and growers associations), Lao People's Democratic Republic (rural land law), Mali (rural land law), Mozambique (rural land law), Nicaragua (agrarian reform), Niger (rural land law), Rwanda (rural land law), Togo (agrarian reform), Trinidad and Tobago (land use and development), USSR (land reform and land legislation).

b. *Water legislation*

Burundi, Chile, Indonesia.

c. *Animal health and production legislation*

Organization of Eastern Caribbean States (OECS) (animal quarantine), Burkina Faso (animal production and bee industry), Rwanda (animal quarantine).

(iii) *Plant protection legislation*

Antigua and Barbuda, Burundi, Mali, Mauritania, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Sudan, Swaziland, Syrian Arab Republic, Uganda, United Republic of Tanzania, Zaire.

(iv) *Plant production and seed legislation*

India (Plant Breeders Rights), Indonesia (seed), Pakistan (Cotton Standards), Zaire (seed).

(v) *Pesticide legislation*

Burundi, Ghana, Mali, Mauritania, Rwanda, Pakistan, Swaziland, United Republic of Tanzania.

(vi) *Food legislation*

Bulgaria, Burkina Faso, Cape Verde, Czechoslovakia, Guinea-Bissau.

a. *Fisheries legislation*

Burundi, Caribbean Community (CARICOM), China, Chile, Cook Islands, Costa Rica, Cyprus, Djibouti, El Salvador, Guatemala, Guinea, Guinea-Bissau, Honduras, Myanmar, Namibia, Nicaragua, OECS, Panama, Peru, Rwanda, Sao Tome and Principe, Sierra Leone, Western Samoa, Suriname, Zaire.

b. *Forestry and wildlife legislation*

Bhutan (forestry), Cape Verde (forestry), Fiji (forestry), Guinea (forestry), Lao People's Democratic Republic (forestry), Morocco (forestry), Myanmar (forestry), Western Samoa (watershed), Trinidad and Tobago (forestry and national parks), Uganda (wildlife and national parks), United Republic of Tanzania (marine parks and reserves).

c. *Environment legislation*

Cook Islands (soil conservation), Guinea (soil conservation), United Republic of Tanzania (sustainable agricultural development).

(vii) *Legislative research and publications*

Research was conducted, *inter alia*, on:

—Water Resources Management Regulations;

—International water treaties—Europe;

—FAO activities in the field of environmental law;

—Forest usage rights;

—Pesticide registration procedures;

—European Economic Community (EEC) food law;

—Case studies on land reform and land legislation issues: EEC, Central and Latin America, Egypt, India, United States, USSR.

(viii) *Collection, translation and dissemination of legislative information*

In 1991, FAO published the annual *Food and Agricultural Legislation* (Recueil de législation: alimentation et agriculture; Colección legislativa: agricultura y alimentación).

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) Constitutional and procedural questions

By its resolution 26 C/19.3, adopted on 24 October 1991, the General Conference decided, *inter alia*, to amend article V of the Constitution of UNESCO[432] to the effect that the Executive Board "shall consist of fifty-

one member States". Accordingly, the Executive Board, immediately after the twenty-seventh session of the General Conference in 1993, will no longer be composed of physical persons but of member States. This amendment will entail consequential changes in the rules of procedure governing the election of members of the Executive Board.

(*b*) International regulations

Entry into force of instruments previously adopted

On 29 August 1991 the Convention on Technical and Vocational Education[433] entered into force.

(*c*) Initial special reports by member States

At its 26th session, the General Conference examined the initial special reports submitted by member States on the action taken by them on the Convention on Technical and Vocational Education and on the Recommendation on the safeguarding of traditional culture and folklore.[434]

(*d*) Human rights

Examination of cases and questions concerning the exercise of human rights coming within UNESCO's fields of competence

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 14 to 16 May 1991 and from 24 to 26 September 1991, in order to examine communications which had been transmitted to it in accordance with Executive Board decision 104 EX/3.3.

At its spring session the Committee examined 28 communications, of which 17 were examined with a view toward their admissibility and 11 were examined on their substance. Of the 17 communications examined as to admissibility, none were declared admissible, 1 was declared irreceivable and 6 were struck from the list since they were considered as having been settled. The examination of 21 communications was suspended. The Committee presented its report to the Executive Board at its 136th session.

At its fall session, the Committee had before it 34 communications, of which 24 were examined as to their admissibility and 10 were examined on their substance. Of the 24 communications examined as to their admissibility, none were declared admissible, 2 were declared irreceivable and 6 were struck from the list since they were considered as having been settled or did not, upon examination of the merits, appear to warrant further action. The examination of 26 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 137th session.

4. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Legal meetings

The International Conference on Air Law, convened by the decision of the Council of 4 July 1990, met at Montreal from 12 February to 1 March; 79 States and 6 observer delegations were represented. The purpose of the Conference was to consider, with a view to adopting, the draft articles prepared by the 27th session of the Legal Committee for inclusion in a draft instrument on the marking of plastic [and sheet] explosives for the purpose of detection. As a result of its deliberations, the Conference adopted by consensus and without a vote the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal, on 1 March 1991.[435] The Convention was opened for signature at Montreal on 1 March 1991 and on that day was signed by the delegations of 41 States. By the end of 1991 the Convention had been signed by 45 States and one State had submitted an instrument of approval.

The Final Act of the Conference was signed on behalf of 76 States and includes the text of a resolution which was adopted by the Conference by general consensus.

(*b*) Work programme of the Legal Committee of ICAO

On 14 June, the Council considered the general work programme established by the 27th session of the Legal Committee in 1990 and approved by the Council on 16 November 1990; the Council agreed to amend the general work programme to include the following items in this order of priority:

(1) Institutional and legal aspects of future air navigation systems;

(2) Legal aspects of global air-ground communications;

(3) United Nations Convention on the Law of the Sea—implications, if any, for the application of the Chicago Convention, its annexes and other international air law instruments;

(4) Liability of air-traffic control agencies;

(5) Action to expedite ratification of Montreal Protocols Nos. 3 and 4 of the "Warsaw System";

(6) Study of the instruments of the "Warsaw System".

In 1990, the Chairman of the Legal Committee had appointed a Rapporteur on the item "Institutional and legal aspects of future air navigation systems" and another Rapporteur on the "Legal aspects of global air-ground communications".

The 10th Air Navigation Conference (5-20 September) addressed under agenda item 4 the subject "Consideration of the institutional aspects of future air navigation systems". As a result of its deliberations, the Conference adopted recommendations 4/1 and 4/2. Recommendation 4/2 states *inter alia*, that ICAO should expedite the work of the Legal Committee on items (1) and (2) in its General Work Programme.

During its 134th session, in December 1991, the Council decided to convene the 28th session of the Legal Committee from 11 to 22 May 1992 with the following terms of reference: to study in the light of recommendations 4/1 and 4/2 adopted by the 10th Air Navigation Conference, as well as the Rapporteurs' reports, the subjects "Institutional and legal aspects of future air navigation systems" and "Legal aspects of global air-ground communications".

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5. WORLD HEALTH ORGANIZATION

(*a*) Constitutional and legal developments

During 1991, the following countries became members of the World Health Organization by deposit of an instrument of acceptance of the Constitution,[436] as provided for in articles 4, 6 and 79 (*b*) of the Constitution.

Marshall Islands	5 June 1991
Micronesia (Federated States of)	14 August 1991
Lithuania	25 November 1991
Latvia	4 December 1991

In the case of the Marshall Islands and the Federated States of Micronesia, which were not Members of the United Nations, the World Health Assembly accepted their application for admission. On 8 May 1991, Tokelau became an associate member of WHO by acceptance of the application for admission by the World Health Assembly. Thus, at the end of 1991, there were 170 State members and one associate member of WHO.

The amendments to articles 24 and 25 of the Constitution, adopted in 1986 by the thirty-ninth World Health Assembly to increase membership of the Executive Board from 31 to 32, had been accepted by 84 member States on 31 December 1991; acceptance by two-thirds of member States is required for the amendments to enter into force.

(*b*) Health legislation

As in previous years, WHO's Health Legislation Programme continued to focus primarily on two interrelated functions. The first is to provide direct technical cooperation to member States seeking to review their health legislation. Thus, consultant missions were undertaken in nine countries. The second is to promote the international transfer and exchange of information on all aspects of health and environmental legislation (and to a growing extent bioethics). The cornerstone of this "clearinghouse" function remained the quarterly journal, the *International Digest of Health Legislation* (and its French-language counterpart, the *Recueil international de législation sanitaire*). Regional health legislation information systems were operated by WHO's regional offices for the Americas (in Washington, D.C.) and Europe (in Copenhagen).

The Programme maintained its strong interest in all aspects of HIV/AIDS legislation, and was represented at a number of international and national meetings on this topic. It was also represented at a number of international and national conferences on health and medical law and cognate areas. It was represented at a meeting in the Library of Congress in Washington, D.C., the first in a series that, it is hoped, will lead to the creation of what is tentatively known as the International Legislative Information Network (ILIN).

On 13 May 1991, the World Health Assembly adopted a resolution endorsing a set of Guiding Principles on Human Organ Transplantation.[437] These are contained in a report published in 1991, which likewise includes the outcome of a review of international and national legislation, codes and other measures to combat commercialism in the use of human organs and tissues for therapeutic purposes.[438] WHO was represented at a number of international conferences on this subject, every opportunity being taken to promote the Guidelines.

In October 1991, WHO responded to a request from the Ministry of Health of the Islamic Republic of Iran, for technical support in the implementation of the International Code of Marketing of Breast-milk Substitutes. A senior legal officer was sent to Tehran and a draft national Code was formulated, in cooperation with the national Iranian team established for that purpose.

(*c*) Expanded role of the International Programme on Chemical Safety and the establishment of an intergovernmental mechanism for chemical risk assessment and management

In 1989, the United Nations General Assembly decided to convene in June 1992 a Conference on Environment and Development, during the preparatory work for which environmentally sound management of toxic chemicals was identified as a priority area where an international strategy needed to be developed. The International Programme on Chemical Safety (IPCS), along with the various international organizations actively working in the field of chemical safety, assisted the UNCED secretariat in developing this strategy and in preparing proposals for examination at the Conference itself. As part of the preparatory process, a meeting of Government-designated experts was held in London in December 1991, in order to examine the possible need for an intergovernmental mechanism on chemical risk assessment and management.

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6. WORLD BANK

(*a*) IBRD, IFC, IDA—membership

During 1991, Albania and Mongolia became members of the Bank and IDA and Albania, Bulgaria, the Central African Republic and Mongolia

became members of IFC. As at 31 December 1991, membership in these organizations stood at 156, 140 and 143, respectively.

(*b*) The Global Environment Facility

The Global Environment Facility (GEF) was established by a resolution adopted by the Executive Directors of the Bank, after negotiations with a large number of interested States and international organizations. The Facility consists of the Global Environment Trust Fund (GET), initially envisaged as a three-year pilot programme, Co-financing Arrangements with the GET, the Ozone Projects Trust Fundi, and such other trust funds as the Bank may agree to administer in the future within the framework of the Facility.

The GET is operated by the Workd Bank in cooperation with two partner agencies, UNEP and UNDP. The Bank administers the Facility's trust funds and is responsible for investment operations. UNDP coordinates and manages the pre-investment phase (financing and execution) and administers technical assistance. UNEP coordinates research and data, providing the overall scientific and technological guidance for selecting and evaluating projects. UNEP also heads a Scientific and Technical Advisory Panel which gives advice on broad scientific and technical issues related to the Facility to the participants and to the three institutions involved. The three institutions cooperate in identifying other agencies (e.g., NGOs, United Nations specialized agencies) to assess local project impact and to support project design and implementation.

The basic purpose of the Facility is to assist in the protection of the global environment and promote environmentally sound and sustainable economic development in developing countries which can undertake the necessary actions only through additional and concessional financing by the international community. Accordingly, the Facility will provide grants from core allocations to the trust funds, or arrange concessional loans from co-financing contributions, to developing countries, to assist them in implementing programmes and activities for the protection of the global environment. The proceeds of the trust funds established under the GEF will be used in four selected areas of global environment priority, namely: (i) the protection of the ozone layer consistent with the provisions of the Vienna Convention and its Montreal Protocol; (ii) limiting emissions of greenhouse gases which have been found to be a major contributor to global warming; (iii) protection of ecosystems and biodiversity in the developing countries; and, lastly, (iv) protection of international waters from industrial, wastewater and hazardous waste pollution. These four areas were chosen on the basis that they need measures which would benefit the world at large but would not otherwise be fully financed by existing development assistance or environmental programmes.

Countries which may benefit directly from the GET funding are limited to developing countries and territories with UNDP programmes with a per capita GNP at or below $4,000 in 1989. The projects to be financed out of GET resources should meet four conditions. They should be "consistent with global environment conventions", a requirement to be

verified by UNEP. They should also be "consistent with the country-specific environment strategy or programme". They must utilize "appropriate technology from the spectrum of available options". And they must be "both cost-effective and of high priority from the global perspective". Furthermore, investments funded from the GET should be different from regular projects which could be funded otherwise. Typically, they would cover investments which are not justified in a country context if the full costs were to be borne by the country alone and would thus need the additional financing from the GET to be attractive to the country. Also, they would cover investments which are justified in a country context but would need to incur additional costs to bring about additional global benefits.

(*c*) Multilateral Investment Guarantee Agency (MIGA)

Signatories/members

Since the Convention Establishing the Multilateral Investment Guarantee Agency[439] (the "Convention") was opened for signature to member countries of the World Bank and Switzerland in October 1985, 111 countries have signed the Convention, of which 75 had completed the requirements for membership as of 31 December 1991.

Guarantee operations

MIGA, which guarantees foreign investments in developing countries against non-commercial risks arising from expropriation, transfer and conversion of local currency, war and civil disturbance, and breach of contract, has to date insured, co-insured or reinsured 20 projects that facilitated almost US$ 1.2 billion in total investments. MIGA's aggregate contingent liability for these investments is $274 million. Investors holding guarantees from MIGA came from Canada, Denmark, France, Japan, Luxembourg, the Netherlands, Singapore, Sweden and the United States. Host countries of covered investments are Bangladesh, Chile, Guyana, Hungary, Indonesia, Madagascar, Pakistan, Poland and Turkey.

Host country investment agreements between MIGA and its member States

As mandated by article 23 (*b*) (ii) of the Convention, MIGA concludes bilateral investment protection agreements with its member States. Such agreements ensure that MIGA is afforded treatment not less favourable than that accorded by the member country concerned to any State or other public entity in an investment protection treaty or any other agreement relating to foreign investment with respect to the rights to which MIGA may succeed as subrogee of a compensated guarantee holder. As of 31 December 1991, MIGA has concluded agreements with 13 countries: Angola, Bangladesh, Burkina Faso, Cameroon, Congo, China, Ghana, Guyana, Hungary, Mauritius, Pakistan, Poland and Zaire.

In accordance with the directives of article 18 (*c*) of the Convention, MIGA also negotiates agreements on the use of local currency. These

agreements enable MIGA to dispose freely of local currency acquired by it as a result of a claim paid by the Agency for an inability to transfer or convert such currency that has been paid by the Agency. As of 31 December 1991, MIGA has concluded 17 such agreements with Angola, Bangladesh, Burkina Faso, Cameroon, Chile, China, Congo, Ecuador, Egypt, Ghana, Guyana, Hungary, Mauritius, Pakistan, Poland, Turkey and Zaire.

Article 15 of the Convention requires MIGA to obtain before issuing a guarantee the approval of the host country in which the investment is contemplated. In order to expedite the process, MIGA negotiates arrangements with host member States that provide a degree of automaticity in the approval procedure. As of 31 December 1991, the Agency has concluded 21 agreements with Angola, Argentina, Bangladesh, Burkina Faso, Cameroon, Chile, China, Congo, Ecuador, Egypt, Ghana, Guyana, Hungary, Indonesia, Mali, Mauritius, Pakistan, Poland, Sri Lanka, Turkey and Zaire.

Convention

Article 39 (*c*) of the Convention requires that a review of the allocation of shares in the Agency take place before the end of the third year following the entry into force of the Convention, or by 12 April 1991. On that date the Council of Governors adopted resolution No. 20 postponing the review for two years, or by 12 April 1993. In the interim, the shares of the Agency which have not been subscribed will continue to be allocated to the countries and in the number set forth in schedule A to the Convention.

(*d*) International Centre for Settlement of Investment Disputes

Signatures and ratifications

During 1991, five further countries—Albania, Australia, Chile, Grenada and Mongolia—ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention).[440] In the course of the year, the ICSID Convention was signed by a further four countries, namely Argentina, Bolivia, Czechoslovakia and Guinea-Bissau. With these new signatures and ratifications, the number of signatory States and contracting States reached 109 and 97 respectively.

Disputes before the Centre

In January 1991, an ad hoc committee was constituted under article 52 of the ICSID Convention to consider applications to annul the second award made in *Amco Asia Corporation et al. v. Republic of Indonesia* (case ARB/87/3).

In June 1991, the jurisdictional decision was rendered in *Manufacturers Hanover Trust Company v. Arab Republic of Egypt and the General Authority for Investment and the Free Zones* (case ARB/89/1).

As of 31 December 1991, the following four cases were pending before the Centre:

(*a*) *Amco Asia et al. v. Republic of Indonesia* (case/81/1) (Annulment);

(*b*) *SPP (ME) v. Arab Republic of Egypt* (case ARB/84/3);

(*c*) *Société d'études de travaux et de gestion S.A.—SETIMEG v. Republic of Gabon* (case ARB/87/1);

(*d*) *Manufacturers Hanover Trust Company v. Arab Republic of Egypt and the General Authority for Investment and the Free Zone* (case/89/1).

ICSID and national courts

In 1989, the Paris Court of Appeal, invoking rules on sovereign immunity from execution, reversed an earlier decision of the President of the Tribunal de grande Instance of Paris granting exequatur of the award rendered in the claimant's favour in 1988 in the ICSID case of *Société Ouest Africaine des Bétons Industriels v. State of Senegal* (case ARB/82/1). In June 1991, the French Court of Cassation quashed the Paris Court of Appeal's 1989 decision as being, *inter alia*, inconsistent with the ICSID Convention.

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7. INTERNATIONAL MONETARY FUND

MEMBERSHIP

During 1991, two countries became members of the Fund: Mongolia, on 14 February 1991, with a quota of SDR 25 million; and Albania, on 15 October 1991, with a quota of SDR 25 million. With the admission of Albania, the membership of the Fund totaled 156 countries.

During the course of 1991, the Fund received membership applications from the USSR, Estonia, Lithuania, the Marshall Islands, Latvia, the Federated States of Micronesia and Ukraine.

NINTH GENERAL REVIEW OF QUOTAS AND THE PROPOSED THIRD AMENDMENT OF THE ARTICLES OF AGREEMENT

As described in the relevant section of the 1990 *United Nations Juridical Yearbook* (p. 180), an increase in the total of the quotas of Fund members was authorized by the Board of Governors in 1990 and proposed to countries that were Fund members on 30 May 1990. The resolution of the Board of Governors provides that no increase in quotas shall become effective before members having not less than 85 per cent of the total of quotas on 30 May 1990 have consented to the increases in their quotas during the period ending 30 December 1991, or after 30 December 1991, members having not less than 70 per cent of the total of quotas on 30 May 1990 have consented to the increases in their quotas. The resolution of the

Board of Governors also specifies that no quota increase shall come into effect before the effective date of the Third Amendment of the Fund's Articles.

Under the resolution, members had until 31 December 1991 to consent to their increases in quotas. On 11 December 1991, the Executive Board extended by six months—until 30 June 1992—the date by which Fund members must consent to the proposed increases in their quotas. As of the end of December 1991, 103 members, accounting for 66.69 per cent of total quotas on 30 May 1990, had consented to the increases in their quotas, and 69 members, accounting for 56.30 per cent of the total voting power, had accepted the proposed Third Amendment.

Special Association Agreement with the USSR

On 5 October 1991, the Managing Director of the Fund and President Gorbachev signed an agreement establishing a Special Association between the USSR and the Fund.

This arrangement made Fund policy advice and technical assistance immediately available to the USSR and the individual republics constituting it. The Baltic States, which had already been recognized as independent of the USSR, were not included in the Special Association. Pursuant to the agreement, the Fund agreed to conduct reviews of the economy and provide technical assistance and training courses. For its part, the USSR agreed to provide the Fund with such information as is required from members of the Fund, permit the Fund to have a resident mission and accord the Fund and its officials certain privileges and immunities.

Modification of article IV consultations

Consultations with members of the Fund are provided for by article IV of the Fund's Articles. Through them, the Fund fulfils its obligations to exercise surveillance over the exchange rate policies of its members.

In principle, consultations are held annually. In 1987, the Executive Board introduced the "bicyclic" procedure to provide for a consultation with a Board discussion every second year; in intervening years, the staff holds interim consultation discussions with the member and submits a report to the Board but this did not normally constitute a consultation with the Fund. In February 1991, the Board modified the bicyclic procedure to provide for annual consultations, under which the interim staff reports could either be discussed by the Board following a request by either an Executive Director or the Managing Director, or the consultations completed by decision but without discussion.

In November 1991, the schedule of article IV consultations for certain categories of members was changed temporarily. Certain members were shifted from the annual consultation cycle to the bicyclic procedure, while most members formerly on the bicyclic schedule were shifted to a cycle in which consultations take place every 24 months. The restoration of normal consultations is to be reviewed by the Executive Board not later than November 1992.

Military expenditure

In October 1991, the Board discussed military spending and the role of the Fund. It was agreed that, at a minimum, and for all Fund members, aggregate data, which include fiscal expenditures (including off-budget items), international trade and external assets and liabilities must be reported fully to the Fund. These data should therefore encompass military transactions, even if not separately identified. The Fund staff will continue to request a breakdown of government expenditures, but still at a highly aggregated level. It was also agreed that data on military expenditures should not serve as a basis for establishing performance criteria or similar conditions associated with Fund-supported programmes.

The rights approach

As described in the relevant section of the 1990 *United Nations Juridical Yearbook* (p. 182), under the rights approach members can earn "rights" towards future financing from the Fund through the implementation of a comprehensive economic programme with macroeconomic and structural policy standards associated with programmes supported by extended and Extended Structural Adjustment Facility (ESAF) arrangements. It was envisaged that the rights approach would be available only to members with protracted arrears to the Fund that adopt such a programme that could be endorsed by the Executive Board by the time of the spring 1991 Interim Committee meeting. In view of the progress that has been made with respect to policies and payments to the Fund in some countries with protracted arrears, and the difficult circumstances of some others, the Executive Board agreed, in March 1991, to extend the deadline for Fund endorsement of rights accumulation programmes from the spring 1991 meeting of the Interim Committee to the spring 1992 meeting.

Special charges

The system of special charges on overdue financial obligations to the Fund entered into effect in 1986 with the purpose of recovering from members in arrears the direct financial costs to the Fund of overdue obligations. In April 1991, the Executive Board decided to suspend the application of special charges in the General Resources Account for members in protracted arrears to the Fund that were judged to be actively cooperating with the Fund towards the clearance of their arrears and had undertaken not to increase their overdue obligations to the Fund above a specified ceiling level, and for members for which the Fund endorsed a Fund-monitored or rights accumulation program.

Rate of charge on the use of ordinary resources

As noted in the relevant section of the 1990 *United Nations Juridical Yearbook* (p. 183), the proportion between the basic rate of charge and the SDR interest rate was set at 91.3 per cent for the financial year 1991 and was later reduced to 87.8 per cent. In June 1991, this proportion was further reduced retroactively for the year as a whole from 87.8 per cent to 87.0 per cent. In addition, the Executive Board decided to continue, for the

financial year 1992, the proportional relationship between the basic rate of charge and the SDR interest rate and set the proportion, which will be reviewed at mid-year, at 96.6 per cent.

Enlarged access policy

Introduced as a temporary policy, the enlarged access policy is used to increase the resources available under stand-by or extended arrangements for programmes that need substantial Fund support. For this purpose, the Fund has borrowed from official sources to finance members' purchases under this policy. As described in the relevant section of the 1990 *United Nations Juridical Yearbook* (pp. 180-181), access to the Fund's general resources under the enlarged access policy has been subject to limits expressed in terms of a percentage of a member's quota in the Fund.

In December 1991, The Fund's Executive Board conducted a preliminary review of the enlarged access policy and access limits. It was indicated that the maximum potential access available under the enlarged access policy should be maintained, at least temporarily, under any new access policy that would follow the implementation of the quota increases under the Ninth General Review. In addition, it was agreed that, as the Fund was not expected to make new borrowings following the quota increases, the enlarged access policy would lapse once the quota increases became effective. The Board also decided that ordinary resources would continue to be substituted to meet commitments of borrowed resources in financing purchases made under the enlarged access policy for as long as this policy remained in place, for arrangements approved not later than the date on which the increases in quotas became effective or 31 December 1991, whichever was earlier. Later, when a further delay in the quota increases became apparent, the Executive Board substituted a new cut-off date of 30 June 1992.

Guidelines for borrowing

The guidelines for borrowing by the Fund, which were introduced in 1981 in the context of large-scale borrowing by the Fund to finance the enlarged access policy, were revised in November 1991. The previous guidelines imposed a borrowing limit in terms of a per cent of Fund quotas and provided for a review of the guidelines upon the completion of the Ninth General Review of Quotas. The new guidelines do not set out specific borrowing limits in terms of quotas, but provision is made for appropriate borrowing limits in terms of quotas to be established by the Executive Board in advance of any further borrowing undertaken by the Fund except in the case of borrowing under the General Arrangements to Borrow.

Status under article VIII of article XIV

Members of the Fund accepting the obligations of article VIII undertake to refrain from imposing restrictions on the making of payments and transfers for current international transactions or engaging in multiple currency practices without the Fund's approval. During 1991, two members, namely Tonga and Cyprus, accepted the obligations of article VIII,

sections 2, 3 and 4, raising to 70 the number of members that have accepted these obligations. Albania and Mongolia, which joined the Fund in 1991, availed themselves of the transitional arrangements under article XIV.

Compensatory and Contingency Financing Facility

In the context of the Fund's response to the Middle East crisis that broke out in August 1990, a new but temporary oil element of the Compensatory and Contingency Financing Facility (CCFF) (described in the 1990 *United Nations Juridical Yearbook* (pp. 180-181)) designed to compensate members for sharp rises in the cost of their imports of crude petroleum, petroleum products and natural gas, was introduced. This measure expired on 31 December 1991; however, approval of a member's request for compensatory financing under the oil import element could take place through 30 June 1992, provided that the request was initiated before the end of 1991.

Structural Adjustment Facility and Enhanced Structural Adjustment Facility

In September 1991, The Executive Board reviewed the operations and potential access of eligible members to the resources of the Structural Adjustment Facility (SAF) and the ESAF. These facilities enable the Fund to provide resources on concessional terms to support medium-term macroeconomic adjustment and structural reforms in low-income countries facing protracted balance-of-payments problems. In November 1991, the Executive Board amended the Regulations for Administration of the SAF to the effect that, if the full amount of resources committed to an eligible member under a three-year SAF arrangement has not been disbursed and a subsequent three-year commitment is made under the ESAF for that member, the undisbursed amounts under the previous SAF arrangement may be made available to the member under the three-year ESAF arrangement.

Debt and debt service reduction operations

In 1989, the Fund adopted broad guidelines for its role in the evolving debt strategy and, in particular, for Fund support for debt and debt service reduction operations. In the context of these guidelines, the Executive Board had adopted in 1989 a decision relating to expectations of early repurchase by members of purchases of additional resources for interest support under stand-by or extended arrangements, and purchases of amounts set aside under such arrangements to support operations involving debt reduction. In April 1991, the Executive Board amended this decision mainly to address the situation where a member has purchased additional resources to finance the establishment of a collateral, and any portion of such collateral is subsequently released to that member.

Burden sharing and extended burden sharing

In April 1991, the Executive Board reviewed and decided to continue both the burden sharing and the extended burden sharing mechanisms (see

relevant sections of previous volumes of the *United Nations Juridical Yearbook*, in particular 1986 (p. 172) and 1990 (p. 182)), thereby maintaining the measures taken to strengthen the Fund's financial position against the financial consequences of overdue obligations and to share the burden thereof between debtor and creditor members.

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8. UNIVERSAL POSTAL UNION

As part of the study of the juridico-adminstrative questions entrusted to the Executive Council by the 1989 Washington Congress, the Executive Council has approved the preparation of manuals for the Universal Postal Convention and the Postal Parcels Agreement.

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9. INTERNATIONAL MARITIME ORGANIZATION

(*a*) Membership of the Organization

The following country became a member of the International Maritime Organization: Luxembourg (14 February 1991). As at 31 December 1991, the number of members of IMO was 135. Following the dissolution of the Union of Soviet Socialist Republics, the membership of the USSR in IMO is continued by the Russian Federation as from 26 December 1991. There are also two associate members.

(*b*) Liability for damage caused by hazardous and noxious substances

During 1991 the Legal Committee continued its consideration of a draft international convention on liability and compensation in connection with the carriage of hazardous and noxious goods by sea (HNS convention), as a priority subject.

The Legal Committee considered several issues of a technical kind submitted by the Working Group of Technical Experts, which has been meeting simultaneously during the last three sessions of the Committee. These issues mainly refer to the kind and quantity of hazardous and noxious substances to be included in the scope of a future HNS convention. Other issues considered by the Committee were the criteria to establish a threshold which would trigger the compulsory shipowners' insurance and the possible linkage between the HNS liability regime and other conventions or national legislation on limitation of liability. Particular consideration was also given to the features of the system according to which contributions to a second tier should be assessed.

It is expected that a final draft HNS convention will be submitted for the consideration of a diplomatic conference early in 1994. This subject would therefore be given priority also in 1992.

(*c*) Report on follow-up in connection with a new legal instrument regarding the marking of explosives for detectability

The Legal Committee noted the successful outcome of the ICAO International Conference on Air Law and the Agreement of the Conference on the admission of IMO experts to the Explosives Technical Commission to be established under the provision of the Convention on the Marking of Plastic Explosives for the Purpose of Detection. The Conference was attended by an IMO representative.

(*d*) Follow-up in connection with the Basel Convention

In accordance with the request of the Legal Committee, the IMO Secretariat continued to follow actively the work undertaken under the auspices of UNEP on elements which might be included in a protocol on liability and compensation in accordance with resolution 3 of the Basel Conference. An IMO representative attended the second meeting of the ad hoc working group on the consideration of such elements, which was held at Nairobi from 6 to 9 March 1991.

(*e*) Matters concerning search and rescue (SAR), including those related to the 1979 Conference on the introduction of the Global Maritime Distress and Safety System

"SAR on and over foreign territorial seas": A document, submitted to the Legal Committee by the United States, intended to set forth a legal basis for the right of ships and aircraft to enter the territorial seas and archipelagic waters of foreign coastal States to render assistance to persons, ships or aircraft in danger or distress. In this connection, the Legal Committee recognized the duty to render general assistance to save human life and preserve property which could otherwise be lost. However, when it came to the question of the legal basis for assistance entry, the Committee unanimously agreed that, since there existed no such right in public international law, the matter should be dealt with in bilateral or regional agreements.

(*f*) Amendments to IMO treaties

(i) *1991 amendments to annexes I and V of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL PROT 1978)*

The Marine Environment Protection Committee at its thirty-first session (July 1991) adopted, by resolution MEPC.47(31), amendments to annex I of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (new regulation 26 and other amendments to annex I of MARPOL 73/78).

At the same session, the Marine Environment Protection Committee also adopted, by resolution MEPC.48(31), amendments to annex V of the above-mentioned Protocol (designation of the wider Caribbean area as a special area under annex V of MARPOL 73/78).

The Committee determined, in accordance with article 16 (2) (*f*) (iii) and (*g*) (ii) of the 1973 Convention, that both amendments shall be deemed to have been accepted on 4 October 1992 and will enter into force on 4 April 1993 unless prior to the former date one third or more of the parties or the parties the combined merchant fleets of which constitute 50 per cent or more of the gross tonnage of the world's merchant fleet, have communicated to the Organization their objections to the amendments.

(ii) *1991 amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974)*

The Maritime Safety Committee at its fifty-ninth session (May 1991) adopted by resolution MSC.22(59), amendments to chapters II-2, III, V, VI and VII of the Convention.

The Committee determined, in accordance with article VIII (*b*) (vii) (2) of the Convention, that the amendments shall enter into force on 1 January 1994 unless, prior to 1 July 1993, more than one third of contracting Governments to the Convention, or contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments.

(iii) *1991 amendments to the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973 (INTERVENTION PROT 1973)*

The Marine Environment Protection Committee, at its thirty-first session (July 1991), adopted by resolution MEPC.49(31) an amended list of substances to be annexed to the Protocol. The conditions for the entry into force of the amended list were met on 24 April 1991. The list has therefore entered into force on 24 July 1992, in accordance with the terms of the resolution.

(iv) *1991 amendments to annexes I and II to the International Convention for Safe Container (CSC), 1972, as amended (CSC 1972)*

The Maritime Safety Committee, at its fifty-ninth session (May 1991), adopted by resolution MSC.20(59) amendments to annexes I and II to the Convention. The conditions for their entry into force were met on 1 January 1992 and these amendments shall enter into force on 1 January 1993, in accordance with the terms of the resolution.

(v) *1991 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978)*

The Maritime Safety Committee, at its fifty-ninth session (May 1991), lopted by resolution MSC.21(59) amendments to chapters I, II, IV and ' of the Convention. The conditions for their entry into force were met 1 June 1992 and the amendments shall therefore enter into force on ecember 1992, in accordance with the terms of the resolution.

(*g*) Entry into force of instruments and amendments

(i) *Instruments*

a. *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988*

The conditions for the entry into force of this Convention were met on 2 December 1991 with the deposit of an instrument of approval by France. In accordance with article 18, the Convention entered into force on 1 March 1992.

b. *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988*

The conditions for the entry into force of this Protocol were met on 2 December 1991 with the deposit of an instrument of approval by France. In accordance with article 6, the Protocol entered into force on 1 March 1992.

c. *Annex III to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended*

The conditions for the entry into force of optional annex III to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended, were met on 1 July 1991. The annex entered into force on 1 July 1992 for States parties to MARPOL 73/78 which have accepted that Annex, in accordance with article 15 (2) of the Convention.

(ii) *Amendments*

a. *1990 amendments to the annex to the Convention on Facilitation of International Maritime Traffic, 1965, as amended*

These amendments were adopted by the Facilitation Committee at its nineteenth session on 3 May 1990, by resolution FAL.2(19). The conditions for their entry into force were met on 1 June 1991 and the amendments entered into force on 1 September 1991, in accordance with the terms of the resolution.

b. *1989 amendments to the International Convention for the Safety of Life at Sea, 1974*

These amendments were adopted by the Maritime Safety Committee on 11 April 1989 by resolution MSC.13(57). The conditions for their entry into force were met on 31 July 1991 and the amendments entered into force on 1 February 1992, in accordance with the terms of the resolution.

c. *1990 amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974)*

These amendments were adopted by the Maritime Safety Committee on 25 May 1990 by resolution MSC.19(58). The conditions for their entry into force were met on 31 July 1991 and the amendments entered into force on 1 February 1992, in accordance with the terms of the resolution.

d. *1988 amendments to the International Convention for the Safety of Life at Sea, 1974, concerning radiocommunications for the Global Maritime Distress and Safety System*

These amendments were adopted by a Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on the Global Maritime Distress and Safety System (GMDSS) on 9 November 1988. The conditions for their entry into force were met on 1 February 1990. The amendments entered into force on 1 February 1992, in accordance with the decision of the Conference.

e. *1988 (GMDSS) amendments to the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1978)*

These amendments, resulting from the introduction of the GMDSS, were adopted by a Conference of Contracting Governments to the Protocol, on 10 November 1988. The conditions for the entry into force of these amendments were met on 1 February 1990 and the amendments entered into force on 1 February 1992, as determined by the Conference.

f. *1990 (annexes I and V) amendments to the annexes to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended*

These amendments were adopted by the Marine Environment Protection Committee on 16 November 1990, by resolution MEPC.42(30). The conditions for their entry into force were met on 16 September 1991 and the amendments entered into force on 17 March 1992, in accordance with the terms of the resolution.

g. *1991 amendments to the International Convention for Safe Containers (CSC), 1972, as amended*

These amendments were adopted by the Maritime Safety Committee on 17 May 1991 by resolution MSC.20(59) in accordance with article X of the Convention. The conditions for their entry into force were met on 1 January 1992 and the amendments will enter into force on 1 January 1993.

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10. WORLD INTELLECTUAL PROPERTY ORGANIZATION

(*a*) Membership of WIPO and States party to the treaties administered by WIPO

On 31 December 1991, the membership of the World Intellectual Property Organization[441] increased to 127 with the accessions of Namibia and San Marino. The number of States party to the Paris Convention for the Protection of Industrial Property[442] rose to 102 with the accession of Chile and Swaziland. The number of States party to the Bern Convention

for the Protection of Literary and Artistic Works[443] rose to 88 with the accessions of Ecuador, Ghana, Guinea-Bissau and Malawi. Côte d'Ivoire, Czechoslovakia, Guinea and Mongolia became party to the Patent Cooperation Treaty,[444] bringing the number of contracting States to 49. Spain became party to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations,[445] bringing the number of contracting States to 36. Greece became party to the Convention relating to the Distribution of Programme-carrying Signals Transmitted by Satellite,[446] bringing the number of contracting States to 14. With the accession of Austria, Burkina Faso, Czechoslovakia, France and Mexico, the Treaty on the International Registration of Audiovisual Works[447] entered into force on 27 February 1991.

(*b*) Development cooperation activities in the legal field

For WIPO, the year 1991 was marked by a high level of demand for assistance to developing countries. WIPO's training activities are meant to provide or enhance professional skills and competence for the effective administration and use of the intellectual property system. During the year, training was given to government officials and personnel from the technical, legal, industrial and commercial sectors in the form of courses, study visits, workshops, seminars, training attachments abroad and on-the-job training by international experts.

A condition for ensuring optimum benefits from a country's use of the intellectual property system is the existence of appropriate national legislation. WIPO continued in 1991 to lay emphasis on the advice and assistance that it gives to developing countries in the improvement of their legislation. WIPO prepared draft laws and regulations which, depending on the country concerned, dealt with one or more aspects of intellectual property, or commented on drafts prepared by the Governments of the countries themselves. In total, during the period under review, some 35 countries benefited from such advice and assistance.

(*c*) Setting of norms and standards

The objective of the work in this area is to make the protection and enforcement of intellectual property rights more effective throughout the world with due regard to the social, cultural and economic goals of the various countries. Important progress was achieved in several fields of intellectual property in 1991.

The first part of the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned (Patent Law Treaty) was held in June at The Hague, on premises made available by the Government of the Netherlands. Participation was high: 88 States members of the Paris Union were represented, as were 5 non-member States, 6 intergovernmental organizations and 33 non-governmental organizations. The Conference discussed the drafts of the proposed Patent Law Treaty and its accompanying Regulations. Those discussions will doubtless ease the task of the second part of the Diplomatic

Conference, the date and venue of which will be considered by the Assembly of the Paris Union.

The first session of the Committee of Experts on a Possible Protocol to the Bern Convention was held in November. Fifty-six States, five intergovernmental organizations and 39 non-governmental organizations participated. Discussions were based on the first part of the memorandum prepared by the International Bureau entitled "Questions concerning a possible protocol to the Bern Convention". Those questions related to certain categories of protected works: computer programs, databases, expert systems and other artificial intelligence systems and computer-produced works, as well as the rights of producers of sound recordings. The following conclusions were drawn from the discussions: the legal nature of a possible protocol should be a special agreement under article 20 of the Bern Convention; the Committee should further consider the legal nature and contents of a possible protocol or protocols; the differing opinions on computer software were such that no conclusions could be drawn, so the matter could be considered again in the future by the Committee; databases should be dealt with in the proposed protocol, but not artificial intelligence, while it would be premature to deal with computer-produced works; on the rights of phonogram producers, it was agreed that the protection of those rights should be strengthened and that the International Bureau should look into the nature of a possible new instrument, notably to determine whether it should be limited to copyright or could also cover neighbouring rights.

The third session of the Committee of Experts on the Settlement of Intellectual Property Disputes Between States was held in September with 45 States, 4 intergovernmental organizations and 4 international non-governmental organizations participating. The Committee examined a document prepared by the International Bureau which contained provisions for a draft treaty on the matter and which described the dispute settlement mechanism. The Committee recommended that the International Bureau prepare a draft treaty for discussion by the Committee at its next session (to be held in 1992).

As part of the exploration of intellectual property questions that might require norm-setting, WIPO organized a Worldwide Symposium on the Intellectual Property Aspects of Artificial Intelligence in March. The Symposium examined the various categories of artificial intelligence and their main fields of application from the viewpoint of the possible intellectual property implications. The result of the Symposium was to be taken into account in the preparation of a possible protocol to the Bern Convention. The Committee of Experts which met to consider the protocol decided that it should not deal with artificial intelligence.

Also in connection with the work on intellectual property activities that might require norm-setting, a Symposium on the International Protection of Geographical Indications was held in October. The Symposium, attended by more than 100 participants from 35 countries, was concerned with various aspects of the protection of geographical indications against misuse and with suitable measures to implement protection, such as inter-

national registration. The discussions dealt with both natural produce and industrial goods. Special attention was devoted to the international protection of indications of origin under the agreements administered by WIPO and the preparation of a new agreement on the international protection of geographical indications, to the protection of wine designations in various countries and at the international level, to the national protection of geographical indications in various States and to the protection of geographical indications in the European Community.

The Working Group on the Application of the Madrid Protocol met twice in 1991 to make further improvements to the draft of the Regulations of the Madrid system. Once the Madrid Protocol of 1989 enters into force, the Regulations will cover the procedures under both the Protocol and the Madrid Agreement currently in force, and ensure the harmonious coexistence of the two texts.

A Committee of Experts on the Development of the Hague Agreement concerning the International Deposit of Industrial Designs held its first session in April to recommend solutions (including the possible revision of the Hague Agreement or the establishment of a new system) which should both increase the use of the Hague system of international deposit and permit more States to adhere to the Hague Agreement.

(*d*) Contribution system; arrears in contributions of the least developed countries

In October 1991, the Governing Bodies approved the creation, to take effect from 1 January 1992, of two new—and lower—contribution classes (representing one half and one quarter, respectively, of the one-unit contribution class VII or class C). About 50 developing countries with low assessments in the United Nations system of contributions will benefit from these two new contribution classes which will reduce their present contributions by either 50 per cent or 75 per cent, as the case may be. The Governing Bodies also decided that the amount of the arrears in contributions of any least developed country relating to years preceding 1990 be entered in a special account ("frozen account"); payment of the arrears would not be demanded, although some payments were expected and encouraged.

(*e*) Central and Eastern Europe

During the year the International Bureau contributed, in an advisory capacity, to the legislative changes that took place or were being planned in Central and Eastern European countries in the intellectual property field.

The Governing Bodies of WIPO decided, in October 1991, that in the 1992-1993 biennium, the International Bureau of WIPO will give special attention to the needs of Central and Eastern European countries. To that end a special unit, the Central and Eastern Europe Section, was set up at the International Bureau in October 1991. There are also plans for semi-

nars and other meetings to be organized at the national and inter-country levels on various aspects of intellectual property.

(*f*) Collection of intellectual property laws and treaties

WIPO continued to keep up to date its collection of the texts of laws and regulations of all countries and treaties dealing with industrial property, copyright and neighbouring rights, both in their original languages and in English and French translations. The texts concerning industrial property were published in *Industrial Property Laws and Treaties (Lois et traités de propriété industrielle)* and in the monthly periodical *Industrial Property/La propriété industrielle*, whereas the texts concerning copyright and neighbouring rights were published in the monthly periodicals *Copyright/Le droit d'auteur*.

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11. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

(*a*) Postponement of the fourteenth session of the Governing Council

Due to the Gulf war in January 1991, the President of IFAD, at the request of the Chairman of the Governing Council, decided to postpone the fourteenth session of the Governing Council scheduled for January 1991 in accordance with rule 2 of the Rules of Procedure of the Governing Council.

At its fifth special session, on 21 January 1991, the Executive Board endorsed the decision of the President and requested the President:

(i) To recommend to the Governing Council, by mail, that the operation of rule 34.1 (*g*) of the Rules of Procedure of the Governing Council be temporarily suspended so as to allow the Governing Council to approve the budget of IFAD for 1991 through a vote by correspondence;

(ii) To despatch, by the most rapid means, a copy of the proposed budget of IFAD for 1991 to the Governors for their approval;

(iii) To recommend to the Governing Council that the outgoing Executive Directors and Alternate Directors of the Executive Board remain in office until the election of their successors at the fourteenth session of the Governing Council.

In the light of the postponement of its fourteenth session, the Governing Council approved the budget of IFAD for 1991 on 15 March 1991 through, for the first time, a vote by correspondence[448] and, accordingly, adopted the following resolutions:

(i) *Resolution 62/XIV*, which, in accordance with rule 45 of the Rules of Procedure of the Governing Council, suspended tem-

porarily the operation of rule 34.1 (*g*) of the Rules of Procedure of the Governing Council to the extent that it related to the approval of the budget of IFAD for 1991 through a vote by correspondence;

(ii) *Resolution 63/XIV*, which approved the budget of IFAD for 1991.

The fourteenth session of the Governing Council was eventually held in Rome from 29 to 30 May 1991.

(*b*) Membership

(i) *Reclassification*

The Agreement Establishing IFAD classifies IFAD's membership into three categories. In accordance with article 3.3 (*b*) of the Agreement Establishing IFAD, "the classification of a Member may be altered by the Governing Council, by a two-thirds majority of the total number of votes, with the concurrence of that Member."

The Government of Portugal requested that Portugal be reclassified from category III (developing recipient countries) to category I (donor developed countries). Portugal is an original member of IFAD and has contributed to IFAD's resources.

Upon the recommendation of the Executive Board, the Governing Council, at its fourteenth session (29-30 May 1991), adopted resolution 65/XIV, which reclassified Portugal as a member of category I as from 29 May 1991.

(ii) *New membership*

In accordance with articles 3.2 (*b*) of the Agreement Establishing IFAD, at its fourteenth session, the Governing Council decided, upon the recommendation of the Executive Board,[449] to accept the application for non-original membership of Nambia and classified that State as a member of category III and, accordingly, adopted resolution 64/XIV thereon.

(*c*) Second phase of the Special Programme for Sub-Saharan African Countries Affected by Drought and Desertification

The thirteenth session of the Governing Council (January 1990) noted that commitments against the Special Resources for Sub-Saharan Africa (SRS) would have been completed by the end of 1991 and stressed the need to maintain the higher share of resource allocation to sub-Saharan Africa achieved during the period 1986-1990 for a further period of three years. Therefore, the Governing Council requested that the President:

"A. Consult donors about the possibility of additional voluntary contributions to the SRS for a further three years without prejudicing deliberations on the mobilization of core funding for IFAD's resources;

"B. Report back to the Governing Council at its fourteenth session through the Executive Board on the results of these consultations for a decision, so as to adopt the appropriate measures."[450]

As a result of indications by a number of potential donors of their willingness to contribute to a second phase of the Special Programme for Sub-Saharan African Countries Affected by Drought and Desertification (the Special Programme), the President submitted to the Executive Board a study on the strategy and investment priorities envisaged for the second phase of the Special Programme[451] and supplementary information on the Fund's experience with rural small-scale enterprises. At its fifth special session (21 January 1991), the Executive Board decided:

(i) To endorse, in principle, the continuation of the Special Programme into a second and terminal phase, to be completed not later than the date of the effectiveness of the Fourth Replenishment;

(ii) To request the President to conduct a more intensive dialogue with potential contributors to this second phase so as to obtain firmer indications of their level of contribution in order to arrive at a final overall level for the second phase;

(iii) To request the President to submit a supplementary report to its forty-second session containing additional information requested by the Executive Board.

At its forty-second session (April 1991), the Executive Board recommended to the Governing Council the approval of a second and terminal phase of the Special Programme but did not indicate a specific target amount, referring only to the level of the first phase (US$ 300 million) and to its successful implementation.

At its fourteenth session, the Governing Council adopted resolution 67/XIV, in which it decided:

(i) To record its appreciation of the steps taken by the Executive Board and the President in developing a second and terminal phase of the Special Programme on the understanding that the Special Programme would be thereafter integrated into the core Regular Resources not later than the date of effectiveness of the Fourth Replenishment of IFAD's Resources;

(ii) To express its support for the broad objectives of the second phase of the Special Programme and the activities contemplated thereunder, subject to further revision thereof during the amendment of the Basic Framework on Special Resources for Sub-Saharan Africa (the Basic Framework), to be considered by the Executive Board;

(iii) To take note of the appeal made by the African members that every effort should be made to reach a target of US$ 300 million for the second phase of the Special Programme;

(iv) To appeal to all members in a position to do so to contribute generously, on a voluntary basis, to the SRS for the second phase of the Special Programme of three years, bearing in mind the level of resources mobilized for the first phase and its successful implementation;

(v) To request the President to report back to the Governing Council through the Executive Board on the implementation of the second phase of the Special Programme;

(vi) To request the President to include a report on the developments under the second phase of the Special Programme as a separate component of IFAD's annual report;

(vii) To authorize the Executive Board at its forty-third session to consider and approve such amendments to the Basic Framework as may be necessary to ensure the implementation of the said second phase as a continuation of the Special Programme;

(viii) To authorize the Executive Board and the President to commence operations and to implement the second phase of the Special Programme in accordance with the aforesaid Basic Framework, as amended.

Accordingly, the Executive Board, at its forty-third session, in September 1991, approved a number of amendments to the Basic Framework on Special Resources for Sub-Saharan Africa to reflect the creation of a second phase of the Special Programme.[452]

(*d*) IFAD's evolving approaches to environmentally sustainable rural poverty alleviation

As a result of the concern expressed by the Governing Council at its thirteenth session (23-25 January 1990) on the need to integrate environmental considerations into IFAD's lending activities, the Executive Board approved and the Governing Council, at its fourteenth session, endorsed a document entitled IFAD's evolving approaches to environmentally sustainable rural poverty alleviation.[453] The report proposed a two-year preliminary development-and-testing phase, consisting of proactive environmental assessments, pre-investment studies, sectoral studies and the development of operational guidelines for sustainable agriculture which will lay the foundations for a more rigorous treatment of environmental considerations in the design and implementation of IFAD projects. The President was authorized to finance this phase through the Fund's Programme of Work and Budget. The Executive Board will evaluate the preliminary development-and-testing phase upon its completion in order to define suitable ways and means of incorporating the preliminary-phase activities into the framework of the Fund's operations.

12. INTERNATIONAL ATOMIC ENERGY AGENCY

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL[454]

During 1991, 14 more adherences were effected, bringing the total to 41 parties—12 States members of the European Atomic Energy Community (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom), the European Atomic Energy Community and Slovenia (succession).

CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT[455] CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY[456]

During 1991, eight more States—Costa Rica, Cuba, Greece, Ireland, the Netherlands, Slovenia (by succession), Sri Lanka and Turkey—adhered to the Notification Convention. By the end of 1991, there were 62 parties.

In 1991, these same eight States and Yugoslavia adhered to the Convention on Assistance. By the end of 1991, there were 59 parties.

VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE, 1963[457]

During 1991, Slovenia succeeded to the Convention, bringing the total number of parties to 15.

JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION AND THE PARIS CONVENTION[458]

Four States—Cameroon, Italy, the Netherlands and Norway—expressed consent to be bound during 1991. Thus, by the end of the year, the Protocol had been signed by 22 States and 9 States had adhered to it (5 are parties to the Vienna Convention and 4 are parties to the Paris Convention). Adherence of at least 5 States party to each Convention is required for its entry into force.

LIABILITY FOR NUCLEAR DAMAGE

The Standing Committee on Liability for Nuclear Damage held two regular sessions and two intersessional meetings during which preliminary agreement was reached on a number of specific draft texts to amend the Vienna Convention, embracing most of the issues where need for improvement was recognized (e.g., extension of geographical scope, expansion of the concept of nuclear damage to cover damage caused by contamination of the environment, increase of financial limits of operator's liability). While alternative approaches remained on several fundamental issues such as application of the Vienna Convention to military installations and procedure for settlement of claims, the number of options was reduced, providing good ground for convergence of views.

Several alternative proposals were considered regarding the establishment of a system of supplementary funding. Two of these having similar elements received main support and were accepted as a basis for future work. Both suggested conclusion of a separate instrument differing, however, as to the tiers of compensation to be provided by the liable operator and mandatory or voluntary pooling by operators of nuclear installations, provision of public funds by the installation State and collectively by all contracting States, to supplement compensation paid by the operator liable. A proposal for voluntary pooling of States was also considered.

On the question of international State liability and its relationship to the civil liability regime under the revised Vienna Convention, the Committee moved from general discussion to the consideration of specific alternative proposals. Nevertheless, differences of principle remained on this question.

At its meetings in June, the Board of Governors considered the question of liability for nuclear damage. The General Conference, acting upon the report by the Board, reiterated the priority it attached to the consideration of all aspects of the question of liability for damage arising from a nuclear accident, especially in the light of the requests from parties to the Vienna Convention to convene a revision conference (GC(XXXV)/RES/553).

Safeguards Agreements

During 1991, Safeguards Agreements were concluded between IAEA and six States: Democratic People's Republic of Korea, Pakistan, Saint Vincent and the Grenadines, Solomon Islands, South Africa and Tuvalu. IAEA also concluded a safeguards agreement with Argentina, Brazil and the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials. The agreements with the Democratic People's Republic of Korea, Saint Vincent and the Grenadines, Solomon Islands, South Africa and Tuvalu were concluded pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons.

The Agreements with Paksitan[459] and South Africa,[460] as well as the Safeguards Agreements concluded in 1986 with Tuvalu,[461] entered into force in 1991.

By the end of 1991, there were 180 Safeguards Agreements in force with 105 States,[462] 86 of which were concluded pursuant to the Non-Proliferation Treaty and/or the Treaty of Tlatelolco with 90 non-nuclear-weapon States and 3 nuclear-weapon States.

African Regional Cooperative Agreement[463]

Four additional States—Ghana, United Republic of Tanzania, Mauritius and Cameroon—accepted the African Regional Cooperative Agreement for Research, Development and Training related to Nuclear Energy (AFRA) during 1991, bringing the total to 13 States.

[1] Adopted without a vote.
[2] A/CN.10/137.
[3] General Assembly resolution S-10/2; see *Official Records of the General Assembly, Tenth Special Session, Supplement No. 4* (A/S-10/4), sect. III.
[4] Adopted by a recorded vote of 131 to 8, with 23 abstentions.
[5] Adopted by a recorded vote of 123 to 6, with 32 abstentions.
[6] Adopted without a vote.
[7] Adopted by a majority vote of 12 to 1, with 2 abstentions.
[8] League of Nations, *Treaty Series*, vol. XCIV, p. 65.
[9] General Assembly resolution 2826 (XXVI), annex; see also United Nations, *Treaty Series*, vol. 1015, p. 163.
[10] Ibid., vol. 729, p. 161.
[11] S/22508.
[12] United Nations, *Treaty Series*, vol. 1, p. 15.
[13] Ibid., vol. 33, p. 261.
[14] Ibid., vol. 374, p. 147.
[15] S/22509.
[16] S/22871/Rev.1.
[17] S/22872/Rev.1 and Corr.1.
[18] Adopted unanimously.
[19] Adopted unanimously.
[20] S/23165, annex.
[21] S/23268, annex.
[22] United Nations, *Treaty Series*, vol. 1108, p. 151.
[23] Adopted without a vote.
[24] A/46/693, para. 8.
[25] Adopted without a vote.
[26] See A/46/673.
[27] Adopted without a vote.
[28] See *The United Nations Disarmament Yearbook*, vol. 5: 1980 (United Nations publication, Sales No. E.81.IX.4), appendix VII; see also *International Legal Materials*, vol. XIX (1980), p. 1524.
[29] A/46/364, annex.
[30] Adopted without a vote.
[31] Adopted without a vote.
[32] A/46/527.
[33] United Nations publication, Sales No. E.87.IX.8.
[34] Ibid., para. 35.
[35] Adopted by a recorded vote of 155 to none, with 1 abstention.
[36] General Assembly resolution 2222 (XXI), annex.
[37] See *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 27* (A/46/27), para. 91.
[38] Ibid., para. 60 of quoted text.
[39] For the text of the Treaty, see *The United Nations Disarmament Yearbook*, vol. 16: 1991, appendix II.
[40] See *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 42 (A/46/42)*, annex II.
[41] Adopted by a recorded vote of 152 to two, with 3 abstentions.
[42] Adopted by a recorded vote of 119 to 18, with 23 abstentions.
[43] Adopted by a recorded vote of 122 to 16, with 22 abstentions.
[44] For example, General Assembly resolutions 45/58 B and 45/58 H.
[45] Adopted by a recorded vote of 130 to none, with 26 abstentions.
[46] Adopted by a recorded vote of 147 to 2, with 4 abstentions.

[47] United Nations, *Treaty Series*, vol. 480, p. 43.

[48] Adopted by a recorded vote of 110 to 2, with 35 abstentions.

[49] PTBT/CONF/13/Rev.1.

[50] General Assembly resolution 2373 (XXII); see also United Nations, *Treaty Series*, vol. 729, p. 161.

[51] Adopted without a vote.

[52] Adopted by a recorded vote of 152 to none, with 2 abstentions.

[53] Adopted by a recorded vote of 141 to none, with 9 abstentions.

[54] International Atomic Energy Agency, *The Annual Report for 1990* (Austria, July 1991) (GC(XXXV/953)); transmitted to the members of the General Assembly through a note by the Secretary-General (A/46/353).

[55] Adopted without a vote.

[56] A/C.1/46/9, annex.

[57] Adopted by a recorded vote of 108 to 1, with 47 abstentions.

[58] Adopted without a vote.

[59] Adopted by a recorded vote of 76 to 3, with 75 abstentions.

[60] Adopted by a recorded vote of 121 to 3, with 26 abstentions.

[61] United Nations, *Treaty Series*, vol. 684, p. 231.

[62] Adopted by a recorded vote of 127 to 4, with 30 abstentions.

[63] General Assembly resolution 2832 (XXVI) of 16 December 1971.

[64] Adopted without a vote.

[65] League of Nations, *Treaty Series*, vol. XCIV, p. 65.

[66] Adopted without a vote.

[67] See *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 27* (A/46/27), para. 91.

[68] Ibid., para. 89.

[69] General Assembly resolution 2826 (XXVI), annex; see also United Nations, *Treaty Series*, vol. 1015, p. 163.

[70] Adopted without a vote.

[71] BWC/CONF.III/23/11.

[72] Adopted without a vote.

[73] See *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 27* (A/46/27), para. 95.

[74] Adopted without a vote.

[75] See *Official Records of the General Assembly, Forth-sixth Session, Supplement No. 27* (A/46/27), para. 95.

[76] Adopted without a vote.

[77] A/46/301, annex.

[78] Adopted by a recorded vote of 150 to none, with 2 abstentions.

[79] Adopted without a vote.

[80] Adopted without a vote.

[81] See *The United Nations Disarmament Yearbook*, vol. 5: 1980 (United Nations publication, Sales No. E.81.IX.4), appendix VII; see also *International Legal Materials*, vol. XIX (1980), p. 1524.

[82] Adopted without a vote.

[83] Adopted without a vote.

[84] *The United Nations Disarmament Yearbook*, vol. 15: 1990 (United Nations publication, Sales No. E.91.IX.8), appendix II; see also Conference on Disarmament document CD/1064.

[85] Ibid., appendix III; see also Conference on Disarmament document CD/1070.

[86] Adopted by a recorded vote of 154 to none, with 4 abstentions.

[87] Adopted without a vote.

[88] Adopted without a vote.

[89] See General Assembly resolution 35/42B of 12 December 1980.

[90] Membership of the Union of Soviet Socialist Republics (USSR) in the United Nations is being continued as from 24 December 1991 by the Russian Federation.

[91] General Assembly resolution 2734 (XXV); reproduced in *Juridical Yearbook, 1970*, p. 62.

[92] Adopted without a vote.

[93] A/46/681, para. 9.

[94] For the report of the Subcommittee, see A/AC.105/484.

[95] A/AC.105/C.2/L.154/Rev.6.

[96] A/AC.105/C.2/L.154/Rev.7.

[97] A/AC.105/C.2/L.183.

[98] A/AC.105/C.2/L.184.

[99] A/AC.105/C.2/15 and Add.1-13.

[100] United Nations, *Treaty Series*, vol. 610, p. 205.

[101] A/AC.105/C.2/16 and Add.1-10.

[102] See *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 20*, (A/46/20), chap. II, sect. C.

[103] A/AC.105/C.2/L.154/Rev.9.

[104] A/AC.105/486.

[105] A/AC.105/L.191.

[106] Adopted without a vote.

[107] See A/46/637.

[108] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (General Assembly resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (General Assembly resolution 34/68, annex).

[109] Adopted by a recorded vote of 101 to none, with 7 abstentions.

[110] See A/46/679.

[111] A/46/583.

[112] A/46/590.

[113] *International Legal Materials*, vol. XXX, No. 6, p. 1461.

[114] Adopted by a recorded vote of 107 to none, with 6 abstentions.

[115] See A/46/679.

[116] For detailed information, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 25* (A/46/25).

[117] All decisions of the Governing Council referred to in this section were adopted by consensus.

[118] *International Legal Materials*, vol. XXVIII, No. 3, p. 657.

[119] Ibid., vol. XXX, No. 3, p. 775.

[120] Ibid., vol. XXVI, No. 6, p. 1541.

[121] Ibid., vol. XXX, No. 2, p. 541.

[122] Ibid., vol. XXVI, No. 6, p. 1529.

[123] UNEP/GC.16/19 and Corr.1.

[124] UNEP/GC.16/INF.4.

[125] For detailed information, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 48* (A/46/48), vols. I and II.

[126] All decisions of the Committee were adopted by consensus.

[127] A/CONF.151/PC/57.

[128] A/CONF.151/PC/28.

[129] A/CONF.151/PC/66.

[130] A/CONF.151/PC/42/Add.4.

[131] A/CONF.151/PC/WG.I/L.28.

[132] A/CONF.151/PC/79.

[133] A/CONF.151/PC/77.

[134] A/CONF.151/PG/WG.III/CRP.8, A/CONF.151/PC/83, A.CONF.151/PG/WG.III/L.5, A/CONF.151/PC/WG.III/L.6, A/CONF.151/PC/WG.III/L.16 and A/CONF.151/WG.III/L.17.

[135] Adopted without a vote.

[136] See A/46/728.

[137] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 48* (A/46/48), vol. I.

[138] Ibid., vol. II.

[139] Adopted without a vote.

[140] See A/46/729.

[141] See A/AC.237/6 and Corr.1, A/AC.237/9 and A/AC.237/12 and Corr.1.

[142] Adopted without a vote.

[143] A/46/645/Add.6, para. 40.

[144] A/46/156-E/1991/54.

[145] A/46/214-E/1991/77.

[146] A/46/138-E/1991/52.

[147] A/46/615 and Add.1.

[148] A/C.2/46/3.

[149] Adopted without a vote.

[150] A/46/645/Add.2.

[151] A/46/564, annex.

[152] For detailed information, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 12* (A/46/12), and ibid., *Supplement No. 12A* (A/46/12/Add.1).

[153] United Nations, *Treaty Series*, vol. 189, p. 137.

[154] Ibid., vol. 606, p. 267.

[155] *The Regulation of Statelessness under International and National Law*, Oceana Publications, Inc., Dobbs Ferry, New York, p. 137.

[156] *Yearbook on Human Rights for 1986* (United Nations publication, Sales No. E.91.XIV.4), p. 194.

[157] For detailed information, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 12A* (A/46/12/Add.1).

[158] E/SPC/67, annex.

[159] E/SC/64.

[160] A/AC.96/754.

[161] See A/AC.96/731, paras. 44-49.

[162] Adopted without a vote.

[163] See A/46/705.

[164] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 12A* (A/46/12/Add.1), para. 25.

[165] EC/SCP/67, annex.

[166] United Nations, *Treaty Series*, vol. 520, p. 151.

[167] Ibid., vol. 1019, p. 175.

[168] Ibid., vol. 976, p. 3.

[169] Ibid., p. 105.

[170] E/CONF.82/15 and Corr.2; issued also as a United Nations publication (Sales No. E.91.XI.6).

[171] Adopted without a vote.

[172] See A/46/720.

[173] Adopted without a vote.

[174] See A/46/720.

[175] General Assembly resolution S-17/2, annex; excerpts from the Global Programme of Action are reproduced in *Juridical Yearbook, 1990*, p. 77.

[176] See *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987* (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.

[177] Adopted without a vote.

[178] See A/46/720.

[179] See *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987* (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.

[180] General Assembly resolution S-17/2, annex; see also *Juridical Yearbook, 1990*, p. 77.

[181] Adopted without a vote.

[182] See A/46/720.

[183] A/46/480.

[184] United Nations, *Treaty Series*, vol. 993, p. 3.

[185] Ibid., vol. 999, p. 171.

[186] Ibid.

[187] General Assembly resolution 44/128, annex.

[188] Adopted without a vote.

[189] See A/46/721.

[190] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40* (A/46/40).

[191] *Official Records of the Economic and Social Council, 1991, Supplement No. 3* and Corrigendum (E/1991/23 and Corr.1).

[192] Adopted without a vote.

[193] See General Assembly resolution 2106 A (XX), annex; reproduced in *Juridical Yearbook, 1965*, p. 63; see also United Nations, *Treaty Series*, vol. 660, p. 195.

[194] Adopted without a vote.

[195] See A/46/718.

[196] General Assembly resolution 38/14, annex.

[197] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 18* (A/46/18).

[198] Adopted without a vote.

[199] A/46/721, para. 103.

[200] See General Assembly resolution 3068 (XXVIII), annex; reproduced in *Juridical Yearbook, 1973*, p. 70; see also United Nations, *Treaty Series*, vol. 1015, p. 243.

[201] Adopted by a recorded vote of 118 to 1, with 39 abstentions.

[202] See A/46/718.

[203] A/46/391.

[204] See General Assembly resolution 34/180, annex; reproduced in *Juridical Yearbook, 1979*, p. 115; see also United Nations, *Treaty Series*, vol. 1249, p. 13.

[205] Adopted without a vote.

[206] A/46/653, para. 18.

[207] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 38* (A/46/38).

[208] A/46/462.

[209] See General Assembly resolution 39/46, annex; also reproduced in *Juridical Yearbook, 1984*, p. 135.

[210] Adopted without a vote.

[211] A/46/721, para. 103.

[212] A/46/394.

[213] General Assembly resolution 44/25, annex.

[214] Adopted without a vote.

[215] See A/46/721.
[216] A/46/392.
[217] General Assembly resolution 45/158, annex.
[218] Adopted without a vote.
[219] See A/46/721.
[220] A/46/395.
[221] Adopted without a vote.
[222] See A/46/721.
[223] See A/44/98, sect. VII, and A/45/636, annex.
[224] See A/44/668, annex.
[225] See A/45/636, annex, para. 53.
[226] Adopted without a vote.
[227] See A/46/721.
[228] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 24* (A/46/24).
[229] Adopted by a recorded vote of 123 to 2, with 34 abstentions.
[230] See A/46/721.
[231] Adopted without a vote.
[232] See A/46/721.
[233] E/CN.4/1991/23 and Add.1.
[234] Adopted without a vote.
[235] See A/46/721.
[236] Adopted by a recorded vote of 134 to 4, with 13 abstentions.
[237] See A/46/721/Add.1.
[238] A/46/609 and Corr.1 and Add.1 and 2.
[239] General Assembly resolution 217 A (III).
[240] General Assembly resolution 2200 A (XXI), annex.
[241] Adopted by a recorded vote of 102 to 40, with 13 abstentions.
[242] See A/46/721.
[243] Adopted without a vote.
[244] See A/46/721.
[245] General Assembly resolution 217 A (III).
[246] General Assembly resolution 2200 A (XXI), annex.
[247] Adopted without a vote.
[248] See A/46/721.
[249] General Assembly resolution 217 A (III).
[250] See General Assembly resolution 2200 A(XXI), annex.
[251] General Assembly resolution 36/55.
[252] Commission on Human Rights resolution 1990/27 (*Official Records of the Economic and Social Council, 1990, Supplement No. 2* and corrigendum (E/1990/22 and Corr.1), chap. II, sect. A) and Economic and Social Council decision 1990/229.
[253] Adopted without a vote.
[254] See A/46/721.
[255] Adopted without a vote.
[256] See A/46/721.
[257] A/46/421.
[258] Adopted without a vote.
[259] See A/46/721.
[260] E/CN.4/Sub.2/1990/32, annex.
[261] Adopted without a vote.
[262] See A/46/721.
[263] Adopted without a vote.
[264] See A/46/721.
[265] A/41/324, annex.
[266] A/46/542.

[267] Adopted without a vote.

[268] See A/46/721.

[269] General Assembly resolution 217 A (III).

[270] General Assembly resolution 2200 A (XXI), annex.

[271] General Assembly resolution 3384 (XXX).

[272] Adopted without a vote.

[273] See A/46/719.

[274] Adopted by a recorded vote of 113 to 22, with 24 abstentions.

[275] See A/46/719.

[276] Adopted by a recorded vote of 122 to 11, with 28 abstentions.

[277] See A/46/719.

[278] General Assembly resolution 44/34, annex.

[279] See *Official Records of the Economic and Social Council, 1991, Supplement No. 2* (E/1991/22), chap. II, sect. A.

[280] A/46/459, annex.

[281] Adopted without a vote.

[282] See A/46/721.

[283] General Assembly resolution 41/128, annex.

[284] E/CN.4/1991/12 and Add.1.

[285] Adopted without a vote.

[286] A/46/704 and Add.1, para. 25.

[287] A/46/363.

[288] Adopted by a recorded vote of 134 to none, with 23 abstentions.

[289] United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Sixteenth Session*, vol. 1, *Resolutions*, p. 135.

[290] A/46/497.

[291] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122; see also *The Law of the Sea: United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.83.V.5).

[292] For detailed information on the work of the Preparatory Commission, see the report of the Secretary-General (A/46/724).

[293] LOS/PCN/BUR/R.7 and Corr. 1 and LOS/PCN/117.

[294] LOS/PCN/BUR/R.8 and LOS/PCN/122.

[295] LOS/PCN/L.87, annex.

[296] A/CONF.62/L.78.

[297] Adopted by a recorded vote of 140 to 1, with 7 abstentions.

[298] See A/46/724, paras. 15-20.

[299] For the composition of the Court, see General Assembly decision 46/315.

[300] As of 31 December 1990, the number of States recognizing the jurisdiction of the International Court of Justice as compulsory in accordance with declarations filed under Article 36, para. 2, of the Statute of the Court stood at 54.

[301] For detailed information, see *I.C.J. Yearbook 1991-1992*, No. 46.

[302] *I.C.J. Reports 1991*, p. 47.

[303] For detailed information, see *I.C.J. Yearbook, 1990-1991*, No. 45; and *I.C.J. Yearbook, 1991-1992*, No. 46.

[304] *I.C.J. Reports 1991*, p. 6.

[305] For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45; and *I.C.J. Yearbook 1991-1992*, No. 46.

[306] *I.C.J. Reports 1991*, p. 3.

[307] For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45; and *I.C.J. Yearbook 1991-1992*, No. 46.

[308] *I.C.J. Reports 1991*, p. 53.

[309] Ibid., pp. 77-79 and 80.

[310] Ibid., pp. 81-91, 92-95, 96-105 and 119.

[311] Ibid., pp. 120-129, 130-174 and 175-185.

[312] For detailed information see, *I.C.J. Yearbook 1991-1992*, No. 46.

[313] *I.C.J. Reports 1991*, p. 44.

[314] For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45; and *I.C.J. Yearbook 1991-1992*, No. 46.

[315] *I.C.J. Reports 1991*, p. 9.

[316] For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45; and *I.C.J. Yearbook 1991-1992*, No. 46.

[317] See subparagraph (iv) above.

[318] For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45; and *I.C.J. Yearbook 1991-1992*, No. 46.

[319] *I.C.J. Reports 1991*, p. 12.

[320] Ibid., pp. 22-24.

[321] Ibid., pp. 25-27, 28-36 and 37-39.

[322] Ibid., p. 41.

[323] For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45; and *I.C.J. Yearbook 1991-1992*, No. 46.

[324] *I.C.J. Reports 1991*, p. 50.

[325] For detailed information, see *I.C.J. Yearbook 1990-1991*, No. 45; and *I.C.J. Yearbook 1991-1992*, No. 46.

[326] For the membership of the Commission, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10* (A/46/10), chap. I, sect. A.

[327] For detailed information, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10* (A/46/10).

[328] Articles 29 to 33 and the annex dealing with the settlement of disputes, which were prepared by the former Special Rapporteur but not discussed, are reproduced in the report of the Commission on the work of its forty-first session (*Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10* (A/44/10), para. 611).

[329] A/CN.4/427/Add.1.

[330] A/CN.4/436 and Corr.1-3.

[331] A/CN.4/435, and Add.1 and Corr.1.

[332] A/CN.4/437 and Corr.1.

[333] A/CN.4/438 and Corr.1.

[334] A/CN.4/439.

[335] A/CN.4/440 and Add.1.

[336] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10* (A/46/10).

[337] Adopted without a vote.

[338] See A/46/687.

[339] *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 10* (A/45/10), chap. II, sect. C.

[340] For the membership of the Commission, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17* and corrigendum (A/46/17 and Corr.1), chap. I, sect. B.

[341] For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXII:1991 (United Nations publication, Sales No. E.93.V.2).

[342] A/CN.9/341

[343] A/CN.9/344.

[344] A/CN.9/347 and Add.1.

[345] A/CN.9/346.

[346] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17* and corrigendum (A/46/17 and Corr.1), annex I.

[347] A/CN.9/343.

[348] A/CN.9/332/Add.8.

[349] A/CN.9/350.

[350] A/CN.9/352.

[351] A/CN.9/351.

[352] 1974 Convention on the Limitation Period in the International Sale of Goods, *Juridical Yearbook, 1974*, p. 101; 1980 Protocol amending the Convention on the Limitation Period in the International Sale of Goods, *Juridical Yearbook, 1980*, p. 191; 1978 United Nations Convention on the Carriage of Goods by Sea, United Nations publication, Sales No. E.80.VIII.1; 1980 United Nations Convention on Contracts for the International Sale of Goods, *Juridical Yearbook, 1980*, p. 116; 1988 United Nations Convention on International Bills of Exchange and International Promissory Notes, General Assembly resolution 43/165; and 1991 United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, reproduced in chap. IV of the present volume of the *Juridical Yearbook*.

[353] United Nations, *Treaty Series*, vol. 330, p. 3.

[354] A/CN.9/353.

[355] Adopted without a vote.

[356] See A/46/688.

[357] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17* and corrigendum (A/46/17 and Corr.1).

[358] Reproduced in chap. IV of the present volume of the *Juridical Yearbook*.

[359] General Assembly resolutions 3201 (S-VI) and 3202 (S-VI).

[360] General Assembly resolution 3362 (S-VII).

[361] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 17* and corrigendum (A/46/17 and Corr.1), paras. 343-349.

[362] Adopted without a vote.

[363] See A/46/688.

[364] A/46/349.

[365] Adopted without a vote.

[366] See A/46/684.

[367] A/46/610 and Corr.1.

[368] General Assembly resolution 45/40, annex.

[369] Adopted without a vote.

[370] See A/46/654.

[371] A/46/346 Add.1 and 2.

[372] 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, United Nations, *Treaty Series*, vol. 704, p. 219; 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, ibid., vol. 860, p. 105; 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, ibid., vol. 974, p. 177; 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, ibid., vol. 1035, p. 167; 1979 International Convention against the Taking of Hostages, General Assembly resolution 34/146, annex; 1980 Convention on the Physical Protection of Nuclear Material, *International Legal Materials*, vol. VIII (1979), p. 1422; 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, ICAO document DOC 9518; 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, IMO document SUA/CONF/15/Rev.1; 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, IMO document SUA/CONF/16/Rev.2; and 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection, see S/22393 and Corr.1.

[373] See *Official Records of the General Assembly, Forty-sixth Session, Sixth Committee*, 12th to 17th, 23rd and 26th meetings, and corrigendum.

[374] General Assembly resolution 2625 (XXV), annex.

[375] Adopted by a recorded vote of 117 to 20, with 17 abstentions.

[376] See A/46/685.

[377] A/39/504/Add.1, annex III.

[378] Adopted without a vote.

[379] See A/46/686.

[380] Reproduced in *Juridical Yearbook, 1990*, p. 159.

[381] Adopted without a vote.

[382] See A/46/687.

[383] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10* (A/46/10), chap. II.

[384] Adopted without a vote.

[385] See A/46/689.

[386] *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 10*, (A/44/10), chap. II.

[387] *Forty-sixth Session, Sixth Committee*, 40th meeting, and corrigendum.

[388] For the report of the Special Committee, see *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 33* and corrigendum (A/46/33 and Corr.1).

[389] A/AC.182/L.66/Rev.1.

[390] A/AC.182/L.70.

[391] See para. 14 of the report of the Special Committee *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 33* and corrigendum (A/46/33 and Corr.1).

[392] For the text of the Declaration, see subparagraph (h) below. See also observations as to the text of the Declaration contained in paras. 20 and 21 of the report of the Special Committee, ibid.

[393] A/AC.182/L.65.

[394] See para. 46 of the report of the Special Committee, op. cit.

[395] A/AC.182/L.68.

[396] Adopted without a vote.

[397] See A/46/690.

[398] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 33* and corrigendum (A/46/33 and Corr.1), annex.

[399] Adopted without a vote.

[400] See A/46/690.

[401] General Assembly resolution 2625 (XXV), annex.

[402] General Assembly resolution 37/10, annex.

[403] General Assembly resolution 42/22, annex.

[404] General Assembly resolution 43/51, annex.

[405] Adopted without a vote.

[406] See A/46/692.

[407] A/46/348 and Add.1 and 2.

[408] United Nations, *Treaty Series*, vol. 596, p. 261.

[409] Adopted without a vote.

[410] See A/46/656.

[411] Adopted without a vote.

[412] A/46/655, para. 7.

[413] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 10* (A/33/10).

[414] Adopted without a vote.

[415] A/46/693, para. 8, and A/46/L.39.

[416] Adopted without a vote.

[417] See A/46/691.

[418] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 26* and addendum (A/46/26 and Add.1).

[419] With regard to the adoption of instruments, information on the preparatory work, which by virtue of the double discussion procedure normally covers a period of two years, is given in order to facilitate reference work in the year during which the instrument was adopted.

[420] ILO *Official Bulletin*, vol. LXXIV, 1991, series A, No. 2, pp. 59-66; English, French, Spanish. Regarding preparatory work, see: *First discussion*—Working conditions in hotels, restaurants and similar establishments, ILC, 77th session (1990) report VI (1) and report VI (2); 80 and 132 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also, ILC, 77th session (1990), *Record of Proceedings*, No. 28; No. 33, pp. 14-17; English, French, Spanish. *Second Discussion*—Working conditions in hotels, restaurants and similar establishments, ILC, 78th session (1991), report IV (1), report IV (2A) and report IV (2B); 11, 72, and 22 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 78th session (1991), *Record of Proceedings*, No. 23; No. 26, pp. 6-16; No. 27, pp. 4 and 17; English, French, Spanish.

[421] This report has been published as report III (part 4) to the 78th session of the Conference and comprises two volumes: vol. A: General Report and Observations concerning particular Countries, report III (4A), 523 pp.; English, French, Spanish; vol. B: General Survey of the Reports on the Paid Educational Leave Convention (No. 140) and Recommendation (No. 148), 1974, and on the Human Resources Development Convention (No. 142), and Recommendation (No. 150), 1975, report III (4B), 212 pp.; English, French, Spanish.

[422] ILO *Official Bulletin*, vol. LXXIV, 1991, series B, supplement 1.

[423] GB.248/20/21 and GB.250/15/25.

[424] ILO *Official Bulletin*, vol. LXXIV, 1991, series B, supplement 2.

[425] ILO *Official Bulletin*, vol. LXXIV, 1991, series B, supplement 3.

[426] Ibid., vol. LXXIV, 1991, series B, No. 1.

[427] Ibid., No. 2.

[428] Ibid., No. 3.

[429] *Basic Texts of the Food and Agriculture Organization of the United Nations*, vols. I and II, 1992 editions (FAO, 1992), p. 3.

[430] These revised General Regulations were also approved by the General Assembly of the United Nations, as the joint parent body of WFP, in resolution 46/22.

[431] Reproduced in CL 99/26.

[432] United Nations, *Treaty Series*, vol. 4, p. 275.

[433] UNESCO document 26C/29.

[434] UNESCO document 26C/30.

[435] For the text, see United Nations Security Council document S/22393, annex; reproduced also in chapter IV of the present volume of *Juridical Yearbook*.

[436] For the text of the Constitution, see United Nations, *Treaty Series*, vol. 15, p. 295.

[437] WHA 44.25.

[438] *Human organ transplantation: a report on developments under the auspices of WHO (1987-1991)* (WHO, Geneva, 1991).

[439] *International Legal Materials*, vol. XXIV, No. 6 (1985), p. 1607.

[440] The text of the ICSID Convention is reproduced in *Juridical Yearbook*, 1966, p. 196.

[441] For the text of the Convention Establishing the World Intellectual Property Organization, see United Nations, *Treaty Series*, vol. 828, p. 3.

[442] *Paris Convention for the Protection of Industrial Property of March 20, 1883* (as amended) official English text, WIPO Publication No. 201(E) (World Intellectual Property Organization, Geneva, 1993).

[443] United Nations, *Treaty Series*, vol. 828, p. 221.

[444] United Nations, *Treaty Series*, 78 (1978).

[445] United Nations, *Treaty Series*, vol. 496, p. 43.

[446] Ibid., vol. 1144, p. 3.

[447] *Treaty on the International Registration of Audiovisual Works, adopted at Geneva on 18 April 1989 and Regulations as in force since 28 February 1991*, WIPO Publication No. 299(E) (World Intellectual Property Organization, Geneva), 1993.

[448] Document GC 14/L.5.

[449] Documents EB 90/40/R.54 and EB/40.

[450] Resolution 60/XIII.

[451] Document EB 90/41/R.87.

[452] Document EB 91/43/R.47.

[453] Documents EB 91/42/R.22 and Addendum and GC14/L.9/Rev.1.

[454] Reproduced in IAEA document INFCIRC/274/Rev.1.

[455] Reproduced in IAEA document INFCIRC/335.

[456] Reproduced in IAEA document INFCIRC/336.

[457] United Nations, *Treaty Series*, vol. 1063, p. 265; the text of the Convention is also reproduced in *IAEA Legal Series*, No. 4.

[458] Reproduced in IAEA document INFCIRC/402.

[459] Reproduced in IAEA document INFICRC/393.

[460] Reproduced in IAEA document INFCIRC/394.

[461] Reproduced in IAEA document INFCIRC/391.

[462] IAEA also applies safeguards to nuclear facilities in Taiwan Province of China.

[463] Reproduced in IAEA document INFCIRC/377.

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. CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT.[1] DONE AT ESPOO, FINLAND, ON 25 FEBRUARY 1991[2]

CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

The Parties to this Convention,

Aware of the interrelationship between economic activities and their environmental consequences,

Affirming the need to ensure environmentally sound and sustainable development,

Determined to enhance international cooperation in assessing environmental impact in particular in a transboundary context,

Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a transboundary context,

Recalling the relevant provisions of the Charter of the United Nations, the Declaration of the Stockholm Conference on the Human Environment, the Final Act of the Conference on Security and Cooperation in Europe and the Concluding Documents of the Madrid and Vienna Meetings of Representatives of the Participating States of the Conference on Security and Cooperation in Europe,

Commending the ongoing activities of States to ensure that, through their national legal and administrative provisions and their national policies, environmental impact assessment is carried out,

Conscious of the need to give explicit consideration to environmental factors at an early stage in the decision-making process by applying environmental impact assessment, at all appropriate administrative levels, as a necessary tool to improve the quality of information presented to decision makers so that environmentally sound decisions can be made paying

careful attention to minimizing significant adverse impact, particularly in a transboundary context,

Mindful of the efforts of international organizations to promote the use of environmental impact assessment both at the national and international levels, and taking into account work on environmental impact assessment carried out under the auspices of the United Nations Economic Commission for Europe, in particular results achieved by the Seminar on Environmental Impact Assessment (September 1987, Warsaw, Poland) as well as noting the Goals and Principles on environmental impact assessment adopted by the Governing Council of the United Nations Environment Programme, and the Ministerial Declaration on Sustainable Development (May 1990, Bergen, Norway),

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Convention,

(i) "Parties" means, unless the text otherwise indicates, the Contracting parties to this Convention;

(ii) "Party of origin" means the Contracting Party or Parties to this Convention under whose jurisdiction a proposed activity is envisaged to take place;

(iii) "Affected Party" means the Contracting Party or Parties to this Convention likely to be affected by the transboundary impact of a proposed activity;

(iv) "Concerned Parties" means the Party of origin and the affected Party of an environmental impact assessment pursuant to this Convention;

(v) "Proposed activity" means any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure;

(vi) "Environmental impact assessment" means a national procedure for evaluating the likely impact of a proposed activity on the environment;

(vii) "Impact" means any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors;

(viii) "Transboundary impact" means any impact, not exclusively of a global nature, within an area under the jurisdiction of a Party caused by a proposed activity the physical origin of which is

situated wholly or in part within the area under the jurisdiction of another party;

(ix) "Competent authority" means the national authority or authorities designated by a Party as responsible for performing the tasks covered by this Convention and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity;

(x) "The Public" means one or more natural or legal persons.

Article 2

GENERAL PROVISIONS

1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.

2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in appendix II.

3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorize or undertake a proposed activity listed in appendix I that is likely to cause a significant adverse transboundary impact.

4. The Party of origin shall, consistent with the provisions of this Convention, ensure that affected Parties are notified of a proposed activity listed in appendix I that is likely to cause a significant adverse transboundary impact.

5. Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated. General guidance for identifying criteria to determine significant adverse impact is set forth in appendix III.

6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.

7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of

the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.

8. The provisions of this Convention shall not affect the right of Parties to implement national laws, regulations, administrative provisions or accepted legal practices protecting information the supply of which would be prejudicial to industrial and commercial secrecy or national security.

9. The provisions of this Convention shall not affect the right of particular Parties to implement, by bilateral or multilateral agreement where appropriate, more stringent measures than those of this Convention.

10. The provisions of this Convention shall not prejudice any obligations of the Parties under international law with regard to activities having or likely to have a transboundary impact.

Article 3

NOTIFICATION

1. For a proposed activity listed in appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.

2. This notification shall contain, *inter alia*:

(*a*) Information on the proposed activity, including any available information on its possible transboundary impact;

(*b*) The nature of the possible decision; and

(*c*) An indication of a reasonable time within which a response under paragraph 3 of this article is required, taking into account the nature of the proposed activity;

and may include the information set out in paragraph 5 of this article.

3. The affected Party shall respond to the Party of origin within the time specified in the notification, acknowledging receipt of the notification, and shall indicate whether it intends to participate in the environmental impact assessment procedure.

4. If the affected Party indicates that it does not intend to participate in the environmental impact assessment procedure, or if it does not respond within the time specified in the notification, the provisions in paragraphs 5, 6, 7 and 8 of this article and in articles 4 to 7 will not apply. In such circumstances the right of a Party of origin to determine whether to carry out an environmental impact assessment on the basis of its national law and practice is not prejudiced.

5. Upon receipt of a response from the affected Party indicating its desire to participate in the environmental impact assessment procedure, the Party of origin shall, if it has not already done so, provide to the affected Party:

(*a*) Relevant information regarding the environmental impact assessment procedure, including an indication of the time schedule for transmittal of comments; and

(*b*) Relevant information on the proposed activity and its possible significant adverse transboundary impact.

6. An affected Party shall, at the request of the Party of origin, provide the latter with reasonably obtainable information relating to the potentially affected environment under the jurisdiction of the affected Party, where such information is necessary for the preparation of the environmental impact assessment documentation. The information shall be furnished promptly and, as appropriate, through a joint body where one exists.

7. When a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in appendix I, and when no notification has taken place in accordance with paragraph 1 of this article, the concerned Parties shall, at the request of the affected Party, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. If those Parties agree that there is likely to be a significant adverse transboundary impact, the provisions of this Convention shall apply accordingly. If those Parties cannot agree whether there is likely to be a significant adverse transboundary impact, any such Party may submit that question to an inquiry commission in accordance with the provisions of appendix IV to advise on the likelihood of significant adverse transboundary impact, unless they agree on another method of settling this question.

8. The concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.

Article 4

PREPARATION OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION

1. The environmental impact assessment documentation to be submitted to the competent authority of the Party of origin shall contain, as a minimum, the information described in appendix II.

2. The Party of origin shall furnish the affected Party, as appropriate through a joint body where one exists, with the environmental impact assessment documentation. The concerned Parties shall arrange for distribution of the documentation to the authorities and the public of the

affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin within a reasonable time before the final decision is taken on the proposed activity.

Article 5

CONSULTATIONS ON THE BASIS OF THE ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENTATION

The Party of origin shall, after completion of the environmental impact assessment documentation, without undue delay enter into consultations with the affected Party concerning, *inter alia*, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact. Consultations may relate to:

(*a*) Possible alternatives to the proposed activity, including the no-action alternative and possible measures to mitigate significant adverse transboundary impact and to monitor the effects of such measures at the expense of the Party of origin;

(*b*) Other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity; and

(*c*) Any other appropriate matters relating to the proposed activity.

The Parties shall agree, at the commencement of such consultations, on a reasonable time-frame for the duration of the consultation period. Any such consultations may be conducted through an appropriate joint body, where one exists.

Article 6

FINAL DECISION

1. The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments received pursuant to article 3, paragraph 8, and article 4, paragraph 2, and the outcome of the consultations as referred to in article 5.

2. The Party of origin shall provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based.

3. If additional information on the significant transboundary impact of a proposed activity, which was not available at the time a decision was made with respect to that activity and which could have materially affected the decision, becomes available to a concerned Party before work on that activity commences, that Party shall immediately inform the other concerned Party or Parties. If one of the concerned Parties so requests, consultations shall be held as to whether the decision needs to be revised.

Article 7

POST-PROJECT ANALYSIS

1. The concerned Parties, at the request of any such Party, shall determine whether, and if so to what extent, a post-project analysis shall be carried out, taking into account the likely significant adverse transboundary impact of the activity for which an environmental impact assessment has been undertaken pursuant to this Convention. Any post-project analysis undertaken shall include, in particular, the surveillance of the activity and the determination of any adverse transboundary impact. Such surveillance and determination may be undertaken with a view to achieving the objectives listed in appendix V.

2. When, as a result of post-project analysis, the Party of origin or the affected Party has reasonable grounds for concluding that there is a significant adverse transboundary impact or factors have been discovered which may result in such an impact, it shall immediately inform the other Party. The concerned Parties shall then consult on necessary measures to reduce or eliminate the impact.

Article 8

BILATERAL AND MULTILATERAL COOPERATION

The Parties may continue existing or enter into new bilateral or multilateral agreements or other arrangements in order to implement their obligations under this Convention. Such agreements or other arrangements may be based on the elements listed in appendix VI.

Article 9

RESEARCH PROGRAMMES

The Parties shall give special consideration to the setting up, or intensification of, specific research programmes aimed at:

(*a*) Improving existing qualitative and quantitative methods for assessing the impacts of proposed activities;

(*b*) Achieving a better understanding of cause-effect relationships and their role in integrated environmental management;

(*c*) Analysing and monitoring the efficient implementation of decisions on proposed activities with the intention of minimizing or preventing impacts;

(*d*) Developing methods to stimulate creative approaches in the search for environmentally sound alternatives to proposed activities, production and consumption patterns;

(*e*) Developing methodologies for the application of the principles of environmental impact assessment at the macroeconomic level.

The results of the programmes listed above shall be exchanged by the Parties.

Article 10

STATUS OF THE APPENDICES

The Appendices attached to this Convention form an integral part of the Convention.

Article 11

MEETING OF PARTIES

1. The Parties shall meet, so far as possible, in connection with the annual sessions of the Senior Advisers to Economic Commission for Europe Governments on Environmental and Water Problems. The first meeting of the Parties shall be convened not later than one year after the date of the entry into force of this Convention. Thereafter, meetings of the Parties shall be held at such other times as may be deemed necessary by a meeting of the Parties, or at the written request of any Party; provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

2. The Parties shall keep under continuous review the implementation of this Convention, and, with this purpose in mind, shall:

(*a*) Review the policies and methodological approaches to environmental impact assessment by the Parties with a view to further improving environmental impact assessment procedures in a transboundary context;

(*b*) Exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements regarding the use of environmental impact assessment in a transboundary context to which one or more of the Parties are party;

(*c*) Seek, where appropriate, the services of competent international bodies and scientific committees in methodological and technical aspects pertinent to the achievement of the purposes of this Convention;

(*d*) At the first meeting, consider and by consensus adopt rules of procedure for their meetings;

(*e*) Consider and, where necessary, adopt proposals for amendments to this Convention;

(*f*) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention.

Article 12

RIGHT TO VOTE

1. Each Party to this Convention shall have one vote.

2. Except as provided for in paragraph 1 of this article, regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 13

SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

(*a*) The convening and preparing of meetings of the Parties;

(*b*) The transmission of reports and other information received in accordance with the provisions of this Convention to the Parties; and

(*c*) The performance of other functions as may be provided for in this Convention or as may be determined by the Parties.

Article 14

AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to this Convention.

2. Proposed amendments shall be submitted in writing to the secretariat, which shall communicate them to all Parties. The proposed amendments shall be discussed at the next meeting of the Parties, provided these proposals have been circulated by the secretariat to the Parties at least ninety days in advance.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

4. Amendments to this Convention adopted in accordance with paragraph 3 of this article shall be submitted by the Depositary to all Parties for ratification, approval or acceptance. They shall enter into force for Parties having ratified, approved or accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties. Thereafter they shall enter into force for any Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.

5. For the purpose of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

6. The voting procedure set forth in paragraph 3 of this article is not intended to constitute a precedent for future agreements negotiated within the Economic Commission for Europe.

Article 15

SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other method of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 of this article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(*a*) Submission of the dispute to the International Court of Justice;

(*b*) Arbitration in accordance with the procedure set out in appendix VII.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

Article 16

SIGNATURE

This Convention shall be open for signature at Espoo, Finland, from 25 February to 1 March 1991 and thereafter at United Nations Headquarters in New York until 2 September 1991 by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraph 8 of the Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence in respect of matters governed by this Convention, including the competence to enter into treaties in respect of these matters.

Article 17

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.

2. This Convention shall be open for accession as from 3 September 1991 by the States and organizations referred to in article 16.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations, who shall perform the functions of Depositary.

4. Any organization referred to in article 16 which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under this Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under

this Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under this Convention concurrently.

5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 16 shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Depositary of any relevant modification to the extent of their competence.

Article 18

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.

2. For the purposes of paragraph 1 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such an organization.

3. For each State or organization referred to in article 16 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 19

WITHDRAWAL

At any time after four years from the date on which this Convention has come into force with respect to a Party, that Party may withdraw from this Convention by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary. Any such withdrawal shall not affect the application of articles 3 to 6 of this Convention to a proposed activity in respect of which a notification has been made pursuant to article 3, paragraph 1, or a request has been made pursuant to article 3, paragraph 7, before such withdrawal took effect.

Article 20

AUTHENTIC TEXTS

The original of this Convention, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Espoo (Finland), this twenty-fifth day of February one thousand nine hundred and ninety-one.

APPENDIX I

List of activities

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2. Thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3. Installations solely designed for the production or enrichment of nuclear fuels, for the reprocessing of irradiated nuclear fuels or for the storage, disposal and processing of radioactive waste.

4. Major installations for the initial smelting of cast-iron and steel and for the production of non-ferrous metals.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 tonnes finished product; for friction material, with an annual production of more than 50 tonnes finished product; and for other asbestos utilization of more than 200 tonnes per year.

6. Integrated chemical installations.

7. Construction of motorways, express roads* and lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more.

8. Large-diameter oil and gas pipelines.

9. Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

10. Waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes.

11. Large dams and reservoirs.

12. Groundwater abstraction activities in cases where the annual volume of water to be abstracted amounts to 10 million cubic metres or more.

13. Pulp and paper manufacturing of 200 air-dried metric tonnes or more per day.

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* For the purposes of this Convention:

"Motorway" means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

(*a*) Is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other by a dividing strip not intended for traffic or, exceptionally, by other means;

(*b*) Does not cross at level with any road, railways or tramway track, or footpath; and

(*c*) Is specially sign-posted as a motorway.

"Express road" means a road reserved for motor traffic accessible only from interchanges or controlled junctions and on which, in particular, stopping and parking are prohibited on the running carriageway(s).

14. Major mining, on-site extraction and processing of metal ores or coal.

15. Offshore hydrocarbon production.

16. Major storage facilities for petroleum, petrochemical and chemical products.

17. Deforestation of large areas.

APPENDIX II

Content of the environmental impact assessment documentation

Information to be included in the environmental impact assessment documentation shall, as a minimum, contain, in accordance with article 4:

(*a*) A description of the proposed activity and its purpose;

(*b*) A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative;

(*c*) A description of the environment likely to be significantly affected by the proposed activity and its alternatives;

(*d*) A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance;

(*e*) A description of mitigation measures to keep adverse environmental impact to a minimum;

(*f*) An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used;

(*g*) An identification of gaps in knowledge and uncertainties encountered in compiling the required information;

(*h*) Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis; and

(*i*) A non-technical summary including a visual presentation as appropriate (maps, graphs, etc.).

APPENDIX III

General criteria to assist in the determination of the environmental significance of activities not listed in appendix I

1. In considering proposed activities to which article 2, paragraph 5, applies, the concerned Parties may consider whether the activity is likely to have a significant adverse transboundary impact in particular by virtue of one or more of the following criteria:

(*a*) *Size*: proposed activities which are large for the type of the activity;

(*b*) *Location*: proposed activities which are located in or close to an area of special environmental sensitivity or importance (such as wetlands designated under the Ramsar Convention, national parks, nature reserves, sites of special scientific interest, or sites of archaeological, cultural or historical importance); also, proposed activities in locations where the characteristics of proposed development would be likely to have significant effects of the population;

(*c*) *Effects:* proposed activities with particularly complex and potentially adverse effects, including those giving rise to serious effects on humans or on valued species or organisms, those which threaten the existing or potential use of an affected area and those causing additional loading which cannot be sustained by the carrying capacity of the environment.

2. The concerned Parties shall consider for this purpose proposed activities which are located close to an international frontier as well as more remote proposed activities which could give rise to significant transboundary effects far removed from the site of development.

APPENDIX IV

Inquiry procedure

1. The requesting Party or Parties shall notify the secretariat that it or they submit(s) the question of whether a proposed activity listed in appendix I is likely to have a significant adverse transboundary impact to an inquiry commission established in accordance with the provisions of this appendix. This notification shall state the subject-matter of the inquiry. The secretariat shall notify immediately all Parties to this Convention of this submission.

2. The inquiry commission shall consist of three members. Both the requesting party and the other party to the inquiry procedure shall appoint a scientific or technical expert, and the two experts so appointed shall designate by common agreement the third expert, who shall be the president of the inquiry commission. The latter shall not be a national of one of the parties to the inquiry procedure, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the matter in any other capacity.

3. If the president of the inquiry commission has not been designated within two months of the appointment of the second expert, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party, designate the president within a further two-month period.

4. If one of the parties to the inquiry procedure does not appoint an expert within one month of its receipt of the notification by the secretariat, the other party may inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the inquiry commission within a further two-month period. Upon designation, the president of the inquiry commission shall request the party which has not appointed an expert to do so within one month. After such a period, the president shall inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The inquiry commission shall adopt its own rules of procedure.

6. The inquiry commission may take all appropriate measures in order to carry out its functions.

7. The parties to the inquiry procedure shall facilitate the work of the inquiry commission and, in particular, using all means at their disposal, shall:

(*a*) Provide it with all relevant documents, facilities and information; and

(*b*) Enable it, where necessary, to call witnesses or experts and receive their evidence.

8. The parties and the experts shall protect the confidentiality of any information they receive in confidence during the work of the inquiry commission.

9. If one of the parties to the inquiry procedure does not appear before the inquiry commission or fails to present its case, the other party may request the inquiry commission to continue the proceedings and to complete its work. Absence of a party or failure of a party to present its case shall not constitute a bar to the continuation and completion of the work of the inquiry commission.

10. Unless the inquiry commission determines otherwise because of the particular circumstances of the matter, the expenses of the inquiry commission, including the remuneration of its members, shall be borne by the parties to the inquiry

procedure in equal shares. The inquiry commission shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

11. Any Party having an interest of a factual nature in the subject-matter of the inquiry procedure, and which may be affected by an opinion in the matter, may intervene in the proceedings with the consent of the inquiry commission.

12. The decisions of the inquiry commission on matters of procedure shall be taken by majority vote of its members. The final opinion of the inquiry commission shall reflect the view of the majority of its members and shall include any dissenting view.

13. The inquiry commission shall present its final opinion within two months of the date on which it was established unless it finds it necessary to extend this time limit for a period which should not exceed two months.

14. The final opinion of the inquiry commission shall be based on accepted scientific principles. The final opinion shall be transmitted by the inquiry commission to the parties to the inquiry procedure and to the secretariat.

APPENDIX V

Post-project analysis

Objectives include:

(*a*) Monitoring compliance with the conditions as set out in the authorization or approval of the activity and the effectiveness of mitigation measures;

(*b*) Review of an impact for proper management and in order to cope with uncertainties;

(*c*) Verification of past predictions in order to transfer experience to future activities of the same type.

APPENDIX VI

Elements for bilateral and multilateral cooperation

1. Concerned Parties may set up, where appropriate, institutional arrangements or enlarge the mandate of existing institutional arrangements within the framework of bilateral and multilateral agreements in order to give full effect to this Convention.

2. Bilateral and multilateral agreements or other arrangements may include:

(*a*) Any additional requirements for the implementation of this Convention, taking into account the specific conditions of the subregion concerned;

(*b*) Institutional, administrative and other arrangements, to be made on a reciprocal and equivalent basis;

(*c*) Harmonization of their policies and measures for the protection of the environment in order to attain the greatest possible similarity in standards and methods related to the implementation of environmental impact assessment;

d) Developing, improving, and/or harmonizing methods for the identification, measurement, prediction and assessment of impacts, and for post-project analysis;

(*e*) Developing and/or improving methods and programmes for the collection, analysis, storage and timely dissemination of comparable data regarding environmental quality in order to provide input into environmental impact assessment;

(*f*) The establishment of threshold levels and more specified criteria for defining the significance of transboundary impacts related to the location, nature or size of proposed activities, for which environmental impact assessment in accord-

ance with the provisions of this Convention shall be applied; and the establishment of critical loads of transboundary pollution;

(*g*) Undertaking, where appropriate, joint environmental impact assessment, development of joint monitoring programmes, intercalibration of monitoring devices and harmonization of methodologies with a view to rendering the data and information obtained compatible.

APPENDIX VII

Arbitration

1. The claimant Party or Parties shall notify the secretariat that the Parties have agreed to submit the dispute to arbitration pursuant to article 15, paragraph 2, of this Convention. The notification shall state the subject-matter of arbitration and include, in particular, the articles of this Convention, the interpretation or application of which are at issue. The secretariat shall forward the information received to all Parties to this Convention.

2. The arbitral tribunal shall consist of three members. Both the claimant Party or Parties and the other Party or Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.

4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such a period, the president shall inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.

6. Any arbitral tribunal constituted under the provisions set out herein shall draw up its own rules of procedure.

7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

8. The tribunal may take all appropriate measures in order to establish the facts.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(*a*) Provide it with all relevant documents, facilities and information; and

(*b*) Enable it, where necessary, to call witnesses or experts and receive their evidence.

10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to this Convention having an interest of a legal nature in the subject-matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.

18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

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2. UNITED NATIONS CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE.[3] DONE AT VIENNA ON 19 APRIL 1991[4]

UNITED NATIONS CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

PREAMBLE

The Contracting States:

Reaffirming their conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic co-operation among all States on a basis of equality, equity and common interest and to the elimination of discrimination in international trade and, thereby, to the well-being of all peoples;

Considering the problems created by the uncertainties as to the legal regime applicable with regard to goods in international carriage when the goods are not in the charge of carriers nor in the charge of cargo-owning interests but while they are in the charge of operators of transport terminals in international trade;

Intending to facilitate the movement of goods by establishing uniform rules concerning liability for loss of, damage to or delay in handing over such goods while they are in the charge of operators of transport terminals and are not covered by the laws of carriage arising out of conventions applicable to the various modes of transport,

Have agreed as follows:

Article 1

DEFINITIONS

In this Convention:

(*a*) "Operator of a transport terminal" (hereinafter referred to as "operator") means a person who, in the course of his business, undertakes to take in charge goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the goods in an area under his control or in respect of which he has a right of access or use. However, a person is not considered an operator whenever he is a carrier under applicable rules of law governing carriage;

(*b*) Where goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if it was not supplied by the operator;

(*c*) "International carriage" means any carriage in which the place of departure and the place of destination are identified as being located in two different States when the goods are taken in charge by the operator;

(*d*) "Transport-related services" includes such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing;

(*e*) "Notice" means a notice given in a form which provides a record of the information contained therein;

(*f*) "Request" means a request made in a form which provides a record of the information contained therein.

Article 2

SCOPE OF APPLICATION

1. This Convention applies to transport-related services performed in relation to goods which are involved in international carriage:

(*a*) When the transport-related services are performed by an operator whose place of business is located in a State Party, or

(*b*) When the transport-related services are performed in a State Party, or

(*c*) When, according to the rules of private international law, the transport-related services are governed by the law of a State Party.

2. If the operator has more than one place of business, the place of business is that which has the closest relationship to the transport-related services as a whole.

3. If the operator does not have a place of business, reference is to be made to the operator's habitual residence.

Article 3

PERIOD OF RESPONSIBILITY

The operator is responsible for the goods from the time he has taken them in charge until the time he has handed them over to or has placed them at the disposal of the person entitled to take delivery of them.

Article 4

ISSUANCE OF DOCUMENT

1. The operator may, and at the customer's request shall, within a reasonable period of time, at the option of the operator, either:

(*a*) Acknowledge his receipt of the goods by signing and dating a document presented by the customer that identifies the goods, or

(*b*) Issue a signed document identifying the goods, acknowledging his receipt of the goods and the date thereof, and stating their condition and quantity in so far as they can be ascertained by reasonable means of checking.

2. If the operator does not act in accordance with either subparagraph (*a*) or (*b*) of paragraph 1, he is presumed to have received the goods in apparent good condition, unless he proves otherwise. No such presumption applies when the services performed by the operator are limited to the immediate transfer of the goods between means of transport.

3. A document referred to in paragraph 1 may be issued in any form which preserves a record of the information contained therein. When the customer and the operator have agreed to communicate electronically, a document referred to in paragraph 1 may be replaced by an equivalent electronic data interchange message.

4. The signature referred to in paragraph 1 means a handwritten signature, its facsimile or an equivalent authentication effected by any other means.

Article 5

BASIS OF LIABILITY

1. The operator is liable for loss resulting from loss of or damage to the goods, as well as from delay in handing over the goods, if the occurrence which caused the loss, damage or delay took place during the period of the operator's responsibility for the goods as defined in article 3, unless he proves that he, his servants or agents or other persons of whose

services the operator makes use for the performance of the transport-related services took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. Where a failure on the part of the operator, his servants or agents or other persons of whose services the operator makes use for the performance of the transport-related services to take the measures referred to in paragraph 1 combines with another cause to produce loss, damage or delay, the operator is liable only to the extent that the loss resulting from such loss, damage or delay is attributable to that failure, provided that the operator proves the amount of the loss not attributable thereto.

3. Delay in handing over the goods occurs when the operator fails to hand them over to or place them at the disposal of a person entitled to take delivery of them within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time after receiving a request for the goods by such person.

4. If the operator fails to hand over the goods to or place them at the disposal of a person entitled to take delivery of them within a period of 30 consecutive days after the date expressly agreed upon or, in the absence of such agreement, within a period of 30 consecutive days after receiving a request for the goods by such person, a person entitled to make a claim for the loss of the goods may treat them as lost.

Article 6

LIMITS OF LIABILITY

1. (*a*) The liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding 8.33 units of account per kilogram of gross weight of the goods lost or damaged.

(*b*) However, if the goods are handed over to the operator immediately after carriage by sea or by inland waterways, or if the goods are handed over, or are to be handed over, by him for such carriage, the liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding 2.75 units of account per kilogram of gross weight of the goods lost or damaged. For the purposes of this paragraph, carriage by sea or by inland waterways includes pick-up and delivery within a port.

(*c*) When the loss of or damage to a part of the goods affects the value of another part of the goods, the total weight of the lost or damaged goods and of the goods whose value is affected shall be taken into consideration in determining the limit of liability.

2. The liability of the operator for delay in handing over the goods according to the provisions of article 5 is limited to an amount equivalent to two and a half times the charges payable to the operator for his services in respect of the goods delayed, but not exceeding the total of such charges in respect of the consignment of which the goods were a part.

3. In no case shall the aggregate liability of the operator under both paragraphs (1) and (2) exceed the limitation which would be established

under paragraph (1) for total loss of the goods in respect of which such liability was incurred.

4. The operator may agree to limits of liability exceeding those provided for in paragraphs 1, 2 and 3.

Article 7

APPLICATION TO NON-CONTRACTUAL CLAIMS

1. The defences and limits of liability provided for in this Convention apply in any action against the operator in respect of loss of or damage to the goods, as well as delay in handing over the goods, whether the action is founded in contract, in tort or otherwise.

2. If such an action is brought against a servant or agent of the operator, or against another person of whose services the operator makes use for the performance of the transport-related services, such servant, agent or person, if he proves that he acted within the scope of his employment or engagement by the operator, is entitled to avail himself of the defences and limits of liability which the operator is entitled to invoke under this Convention.

3. Except as provided in article 8, the aggregate of the amounts recoverable from the operator and from any servant, agent or person referred to in the preceding paragraph shall not exceed the limits of liability provided for in this Convention.

Article 8

LOSS OF RIGHT TO LIMIT LIABILITY

1. The operator is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of the operator himself or his servants or agents done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

2. Notwithstanding the provision of paragraph 2 of article 7, a servant or agent of the operator or another person of whose services the operator makes use for the performance of the transport-related services is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of such servant, agent or person done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 9

SPECIAL RULES ON DANGEROUS GOODS

If dangerous goods are handed over to the operator without being marked, labelled, packaged or documented in accordance with any law or regulation relating to dangerous goods applicable in the country where the goods are handed over and if, at the time the goods are taken in charge by

him, the operator does not otherwise know of their dangerous character, he is entitled:

(*a*) To take all precautions the circumstances may require, including, when the goods pose an imminent danger to any person or property, destroying the goods, rendering them innocuous, or disposing of them by any other lawful means, without payment of compensation for damage to or destruction of the goods resulting from such precautions; and

(*b*) To receive reimbursement for all costs incurred by him in taking the measures referred to in subparagraph (*a*) from the person who failed to meet any obligation under such applicable law or regulation to inform him of the dangerous character of the goods.

Article 10

RIGHTS OF SECURITY IN GOODS

1. The operator has a right of retention over the goods for costs and claims which are due in connection with the transport-related services performed by him in respect of the goods both during the period of his responsibility for them and thereafter. However, nothing in this Convention affects the validity under the applicable law of any contractual arrangements extending the operator's security in the goods.

2. The operator is not entitled to retain the goods if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution in the State where the operator has his place of business.

3. In order to obtain the amount necessary to satisfy his claim, the operator is entitled, to the extent permittted by the law of the State where the goods are located, to sell all or part of the goods over which he has exercised the right of retention provided for in this article. This right to sell does not apply to containers, pallets or similar articles of transport or packaging which are owned by a party other than the carrier or the shipper and which are clearly marked as regards ownership except in respect of claims by the operator for the cost of repairs of or improvements to the containers, pallets or similar articles of transport or packaging.

4. Before exercising any right to sell the goods, the operator shall make reasonable efforts to give notice of the intended sale to the owner of the goods, the person from whom the operator received them and the person entitled to take delivery of them from the operator. The operator shall account appropriately for the balance of the proceeds of the sale in excess of the sums due to the operator plus the reasonable costs of the sale. The right of sale shall in all other respects be exercised in accordance with the law of the State where the goods are located.

Article 11

NOTICE OF LOSS, DAMAGE OR DELAY

1. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given to the operator not later than the third working

day after the day when the goods were handed over by the operator to the person entitled to take delivery of them, the handing over is prima facie evidence of the handing over by the operator of the goods as described in the document issued by the operator pursuant to paragraph 1 (*b*) of article 4 or, if no such document was issued, in good condition.

2. Where the loss or damage is not apparent, the provisions of paragraph (1) apply correspondingly if notice is not given to the operator within 15 consecutive days after the day when the goods reached the final recipient, but in no case later than 60 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

3. If the operator participated in a survey or inspection of the goods at the time when they were handed over to the person entitled to take delivery of them, notice need not be given to the operator of loss or damage ascertained during that survey or inspection.

4. In the case of any actual or apprehended loss of or damage to the goods, the operator, the carrier and the person entitled to take delivery of the goods shall give all reasonable facilities to each other for inspecting and tallying the goods.

5. No compensation is payable for loss resulting from delay in handing over the goods unless notice has been given to the operator within 21 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

Article 12

LIMITATION OF ACTIONS

1. Any action under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

2. The limitation period commences:

(*a*) On the day the operator hands over the goods or part thereof to, or places them at the disposal of, a person entitled to take delivery of them, or

(*b*) In cases of total loss of the goods, on the day the person entitled to make a claim receives notice from the operator that the goods are lost, or on the day that person may treat the goods as lost in accordance with paragraph 4 of article 5, whichever is earlier.

3. The day on which the limitation period commences is not included in the period.

4. The operator may at any time during the running of the limitation period extend the period by a notice to the claimant. The period may be further extended by another notice or notices.

5. A recourse action by a carrier or another person against the operator may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if it is instituted within 90 days after the carrier or other person has been held liable in an action

against himself or has settled the claim upon which such action was based and if, within a reasonable period of time after the filing of a claim against a carrier or other person that may result in a recourse action against the operator, notice of the filing of such a claim has been given to the operator.

Article 13

CONTRACTUAL STIPULATIONS

1. Unless otherwise provided in this Convention, any stipulation in a contract concluded by an operator or in any document signed or issued by the operator pursuant to article 4 is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.

2. Notwithstanding the provisions of the preceding paragraph, the operator may agree to increase his responsibilities and obligations under this Convention.

Article 14

INTERPRETATION OF THE CONVENTION

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.

Article 15

INTERNATIONAL TRANSPORT CONVENTIONS

This Convention does not modify any rights or duties which may arise under an international convention relating to the international carriage of goods which is binding on a State which is a party to this Convention or under any law of such State giving effect to a convention relating to the international carriage of goods.

Article 16

UNIT OF ACCOUNT

1. The unit of account referred to in article 6 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be expressed in the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The equivalence between the national currency of a State Party which is a member of the International Monetary Fund and the Special Drawing Right is to be calculated in acccordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The equivalence between the national currency of a State Party which is not a

member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

2. The calculation mentioned in the last sentence of the preceding paragraph is to be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for amounts in article 6 as is expressed there in units of account. States Parties must communicate to the depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

FINAL CLAUSES

Article 17

DEPOSITARY

The Secretary-General of the United Nations is the depositary of this Convention.

Article 18

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL, ACCESSION

1. This Convention is open for signature at the concluding meeting of the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade and will remain open for signature by all States at the Headquarters of the United Nations, New York, until 30 April 1992.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 19

APPLICATION TO TERRITORIAL UNITS

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. These declarations are to state expressly the territorial units to which the Convention extends.

3. If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a State Party, this Convention shall be applicable only if:

(*a*) The transport-related services are performed by an operator whose place of business is located in a territorial unit to which the Convention extends; or

(*b*) The transport-related services are performed in a territorial unit to which the Convention extends; or

(*c*) According to the rules of private international law, the transport-related services are governed by the law in force in a territorial unit to which the Convention extends.

4. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 20

EFFECT OF DECLARATION

1. Declarations made under article 19 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. Any State which makes a declaration under article 19 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 21

RESERVATIONS

No reservations may be made to this Convention.

Article 22

ENTRY INTO FORCE

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification,

acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

3. Each State Party shall apply the provisions of this Convention to transport-related services with respect to goods taken in charge by the operator on or after the date of the entry into force of this Convention in respect of that State.

Article 23

REVISION AND AMENDMENT

1. At the request of not less than one third of the States Parties to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 24

REVISION OF LIMITATION AMOUNTS

1. At the request of at least one quarter of the States Parties, the depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in article 6.

2. If this Convention enters into force more than five years after it was opened for signature, the depositary shall convene a meeting of the Committee within the first year after it enters into force.

3. The meeting of the Committee shall take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.

4. In determining whether the limits should be amended, and if so, by what amount, the following criteria, determined on an international basis, and any other criteria considered to be relevant, shall be taken into consideration:

(*a*) The amount by which the limits of liability in any transport-related convention have been amended;

(*b*) The value of goods handled by operators;

(*c*) The cost of transport-related services;

(*d*) Insurance rates, including for cargo insurance, liability insurance for operators and insurance covering job-related injuries to workmen;

(*e*) The average level of damages awarded against operators for loss of or damage to goods or delay in handing over goods; and

(*f*) The costs of electricity, fuel and other utilities.

5. Amendments shall be adopted by the Committee by a two-thirds majority of its members present and voting.

6. No amendment of the limits of liability under this article may be considered less than five years from the date on which this Convention was opened for signature.

7. Any amendment adopted in accordance with paragraph 5 shall be notified by the depositary to all Contracting States. The amendment is deemed to have been accepted at the end of a period of 18 months after it has been notified, unless within that period not less than one third of the States that were States Parties at the time of the adoption of the amendment by the Comittee have communicated to the depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph enters into force for all States Parties 18 months after its acceptance.

8. A State Party which has not accepted an amendment is nevertheless bound by it, unless such State denounces the present Convention at least one month before the amendment enters into force. Such denunciation takes effect when the amendment enters into force.

9. When an amendment has been adopted in accordance with paragraph (5) but the 18-month period for its acceptance has not yet expired, a State which becomes a State Party to this Convention during that period is bound by the amendment if it enters into force. A State which becomes a State Party after that period is bound by any amendment which has been accepted in accordance with paragraph 7.

10. The applicable limit of liability is that which, in accordance with the preceding paragraphs, is in effect on the date of the occurrence which caused the loss, damage or delay.

Article 25

DENUNCIATION

1. A State Party may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. Subject to paragraph 8 of article 24, the denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this nineteenth day of April one thousand nine hundred and ninety-one, 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 the present Convention.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

INTERNATIONAL CIVIL AVIATION ORGANIZATION

CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION.[5] DONE AT MONTREAL ON 1 MARCH 1991[6]

Convention on the Marking of Plastic Explosives for the Purpose of Detection

The States Parties to this Convention,

Conscious of the implications of acts of terrorism for international security;

Expressing deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

Concerned that plastic explosives have been used for such terrorist acts;

Considering that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

Recognizing that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

Considering United Nations Security Council resolution 635 (1989) of 14 June 1989, and United Nations General Assembly resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

Bearing in mind resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

Noting with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

Have agreed as follows:

Article I

For the purposes of this Convention:

(1) "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention;

(2) "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable;

(3) "Marking" means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention;

(4) "Manufacture" means any process, including reprocessing, that produces explosives;

(5) "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned;

(6) "Producer State" means any State in whose territory explosives are manufactured.

Article II

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

Article III

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.

2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of article IV.

Article IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.

3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this article held by its authorities performing military or police functions and that are not

incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.

4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.

5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of part 1 of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II (*d*) of part 1 of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other subparagraphs of the said paragraph II.

Article V

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for reappointment.

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

Article VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Technical Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to State Parties amendments to the Technical Annex to this Convention.

Article VII

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Technical Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.

4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this article, the Council may also convene a conference of all States Parties.

Article VIII

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of article VI.

2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council

shall communicate such information to all States Parties and international organizations concerned.

Article IX

The Council shall, in cooperation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

Article X

The Technical Annex to this Convention shall form an integral part of this Convention.

Article XI

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party 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 the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article XII

Except as provided in article XI, no reservation may be made to this Convention.

Article XIII

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this article. Any State which does not sign this Convention may accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance,

approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to article 102 of the Charter of the United Nations and pursuant to article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article XIV

The Depositary shall promptly notify all signatories and States Parties of:

(1) Each signature of this Convention and date thereof;

(2) Each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;

(3) The date of entry into force of this Convention;

(4) The date of entry into force of any amendment to this Convention or its Technical Annex;

(5) Any denunciation made under article XV; and

(6) Any declaration made under paragraph 2 of article XI.

Article XV

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

TECHNICAL ANNEX

Part 1. Description of explosives

I. The explosives referred to in paragraph 1 of article I of this Convention are those that:

(*a*) Are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C;

(*b*) Are formulated with a binder material; and

(*c*) Are, as a mixture, malleable or flexible at normal room temperature.

II. The following explosives, even though meeting the description of explosives in paragraph I of this part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosives that:

(*a*) Are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;

(*b*) Are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;

(*c*) Are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or

(*d*) Are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article IV of this Convention.

III. In this part:

"duly authorized" in paragraph II(*a*), (*b*) and (*c*) means permitted according to the laws and regulations of the State party concerned; and

"high explosives" include but are not restricted to cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX).

Part 2. Detection agents

A detection agent is any one of those substances set out in the following table. Detection agents described in this table are intended to be used to enhance the detectability of explosives by vapour detection means. In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogeneous distribution in the finished product. The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said table.

Table

Name of detection agent	*Molecular formula*	*Molecular weight*	*Minimum concentration*
Ethylene glycol dinitrate (EGDN)	$C_2H_4(NO_3)_2$	152	0.2% by mass
2,3-Dimethyl-2,3-dinitrobutane (DMNB)	$C_6H_{12}(NO_2)_2$	176	0.1% by mass
para-Mononitrotoluene (p-MNT)	$C_7H_7NO_2$	137	0.5% by mass
ortho-Mononitrotoluene (o-MNT)	$C_7H_7NO_2$	137	0.5% by mass

Any explosive which, as a result of its normal formulation, contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

NOTES

[1] The Convention has not yet entered into force.

[2] E.ECE. 1250; the text has been reproduced in *International Legal Materials*, vol. XXX, No. 3 (1991), p. 802.

[3] The Convention has not yet entered into force.

[4] A/CONF.152/13; the text has been reproduced in *International Legal Materials*, vol. XXX, No. 6 (1991), p. 1506.

[5] The Convention has not yet entered into force.

[6] Security Council document S/22393, annex.

Chapter V[1]

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Decisions of the Administrative Tribunal of the United Nations[2]

1. JUDGEMENT NO. 514 (23 MAY 1991): MANECK V. UNITED NATIONS JOINT STAFF PENSION BOARD[3]

Applicant's request for retroactive application of interim measures for calculation of periodic benefit under the Pension Adjustment System—Question whether limiting applicability of the interim measures violates the principle of equal rights—Jurisdiction of the Tribunal with respect to cases involving the United Nations Joint Staff Pension Fund—Validity of various aspects of the Pension Adjustment System in the light of Judgement No. 400, Connolly-Battisti (1987)—Legislative authority of the General Assembly in developing and making changes in the Pension Adjustment System

The Applicant, a former UNESCO staff member whose periodic benefit from the Pension Fund was being paid in accordance with the provisions of the Pension Adjustment System applicable at the time of his separation from service, 1 June 1981, had claimed that he should have been paid in accordance with the provisions of interim measures in effect for those who had separated from service during the period 1987-1990 and payable effective 1 January 1988. Not to have done so, he asserted, was a violation of the principle of equal rights guaranteed by the Charter of the United Nations and the Universal Declaration of Human Rights.

The Tribunal noted that the Applicant had received pension benefits calculated in accordance with provisions in effect at the time of his separation from service. The Tribunal observed that its jurisdiction with respect to cases involving the United Nations Joint Staff Pension Board applied to applications alleging non-observance of the Regulations and Rules of the Pension Fund arising out of decisions of the Pension Board. The Tribunal was not empowered to rewrite existing regulations or to create new regulations for the Pension Fund since that was the function of the General Assembly. The Tribunal likewise had no authority to extend to the Applicant an interim measure adopted by the General Assembly which did not apply to him since that again was a matter for the Assembly's legislative authority.

The Tribunal found that the General Assembly did not act contrary to the Charter or human rights principles when it decided to limit the application of the interim measures to participants who had separated from service during 1987-1990, observing that the interim measures had been established in conformity with the decision in Judgement No. 400, *Connolly-Battisti* (1987). Discussing the role of the General Assembly in developing and making changes in a Pension Adjustment System, the Tribunal, quoting Judgement No. 378, *Bohn, Coeytaux and Vouillemont* (1986), and Judgement No. 379, *Gilbert, Hyde, Ishkinazi and Michel* (1986), pointed out that modifications "must not be arbitrary. They must be reasonable and must be adapted to the aim of the system: adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members." The Tribunal concluded that those words were relevant as a general principle and the General Assembly's action in establishing and limiting the interim measure in question was not in conflict with them.

For the above reasons, the application was rejected in its entirety.

2. JUDGEMENT NO. 516 (28 MAY 1991): SATITE AND WILLIAMS V. THE SECRETARY-GENERAL OF THE INTERNATIONAL MARITIME ORGANIZATION[4]

Applicants' request for recalculation of salary upon promotion from the General Service category to the Professional category as provided for under the Staff Regulations as interpreted by Judgement No. 451, Young (1989), before staff rule 103.5 was amended—Principle of hierarchy of norms—Secretary-General of IMO exercised his authority properly in amending staff rule 103.5

The Applicants, staff members of the International Maritime Organization, had claimed that the Secretary-General of IMO had acted improperly when he amended staff rule 103.5 by adding paragaph (iii), because in their view it contradicted the Staff Regulations. They argued that the amendment provided for the formula "net salary plus post adjustment" to be used in the calculation of the salary adjustment upon promotion from the General Service category to the Professional category, whereas only "net salary" was specified under paragraph 3 (*b*) of annex I to the Staff Regulations. The Applicants, asserting that the Staff Regulations were norms of a higher level than the Staff Rules, further claimed that the relevant staff regulation, as interpreted by the Tribunal in Judgement No. 451, *Young* (1989), should continue to be applied in calculating remuneration upon promotion from the General Service category to the Professional category regardless of the amended staff rule 103.5.

The Tribunal firmly upheld the principle of the hierarchy of norms and, therefore, observed that a norm of inferior level could not lawfully contradict one of a higher level. However, bearing in mind that principle, the Tribunal found that amended staff rule 103.5 in no way contradicted the Staff Regulations. It also found that the IMO Secretary-General had acted within the limits of his competence when he added paragraph (iii) to staff rule 103.5.

Similarly, the Tribunal found no inconsistency between the amended staff rule and Judgement No. 451, *Young* (1989). On the contrary, the Tribunal observed that the Secretary-General of IMO had accepted the Tribunal's decision in the case, when he amended staff rule 103.5 by adding paragraph (iii), which provided for a clarification of the word "salary" found in paragraph 3 (*b*) of annex 1 to the Staff Regulations. It was the Tribunal's opinion that there was no ground to challenge the authority of the Secretary-General of IMO to develop and clarify the provisions of a staff regulation, as long as such an exercise was consistent with that regulation.

The Applicants had also challenged the validity of the amended staff rule 103.5 by claiming that IMO's motive in amending the staff rule was to avoid the consequence of extending to other staff members the system used in *Young*. However, the Tribunal found no fault with IMO's desire to avoid extending to other staff members the calculation system used in *Young*. In the Tribunal's view, the Secretary-General of IMO "should always be free to correct, through normal legal channels, any existing situation calling for correction."

For the foregoing reasons, all the Applicants' pleas were rejected.

3. Judgement No. 526 (31 May 1991): Dewey v. the Secretary-General of the United Nations[5]

Revocation by the Secretary-General of the decision of the High Commissioner for Refugees extending the fixed-term appointment of his Deputy—Authority of the High Commissioner regarding the appointment of a Deputy under paragraphs 14 and 17 of the statute of the Office of the High Commissioner for Refugees—The Applicant cannot bear the consequences of any lack of actual authority on the part of a high administrative official—Confirmation of the Tribunal's jurisprudence in Judgement No. 444, Tortel (1989)—Exceptional character of the case justifying payment of higher compensation

The Applicant, a former Deputy High Commissioner of the Office of the United Nations High Commissioner for Refugees (UNHCR), had claimed that the letter of appointment he was offered and signed on 25 September 1989, covering the period from 1 January 1990 to 31 December 1991, was a valid and binding contract and that because it was withdrawn, upon the resignation of the High Commissioner, he should be reinstated and awarded damages.

The Tribunal noted that there was nothing in the language of paragraphs 14 and 17 of the UNHCR statute which imposed any requirement on the High Commissioner to consult with the Secretary-General before the appointment of his Deputy High Commissioner. Indeed, paragraph 14 reserves to the High Commissioner alone the power to appoint his Deputy and the language of paragraph 17, which simply instructs the High Commissioner and the Secretary-General to make "appropriate arrangements" for consultation on matters of "mutual interest" cannot be interpreted as empowering the Secretary-General to invalidate the appointment of a

Deputy High Commissioner solely because of a lack of consultation on the matter.

The Tribunal also noted that although there was an apparent agreement, dated 16 March 1989, between the High Commissioner and the Assistant Secretary-General of the Office of Human Resources Management (OHRM) to consult in the future before appointments were made by the High Commissioner, the Tribunal was of the view that such an agreement fell far short of establishing that the Secretary-General of the United Nations had the power to compel an agreement and, furthermore, that such an understanding between the High Commissioner and the Assistant Secretary-General of OHRM would necessarily invalidate a subsequent appointment by the High Commissioner contrary to the understanding.

The Tribunal found that there was no evidence that the Applicant had received notice of any limitation on the authority of the High Commissioner. Rejecting the arguments of the Respondent, the Tribunal determined that the Applicant, while occupying the institutional post of the Deputy High Commissioner, could not be deemed to have been aware of the scope of the authority of the High Commissioner, nor would knowledge of any limitation relating specifically to the appointment of a Deputy have been brought to the Applicant during the normal course of business.

The Tribunal recalled its jurisprudence in Judgement No. 444, *Tortel* (1989), in which, dealing with a somewhat analogous situation, it had indicated that it was entirely reasonable for the applicant to have relied on a high administrative official's apparent authority to make a commitment and concluded that the same principle would apply in the case in question, even if the Tribunal had found a lack of actual authority.

For the foregoing reasons, the Tribunal held that the Applicant's appointment from 1 January 1990 to 31 December 1991 was valid and binding and that he had been unlawfully separated from service on 31 December 1989 and ordered that the Applicant be reinstated or be awarded compensation. The Tribunal fixed the compensation to be paid as two years of the Applicant's gross salary plus payment of an amount equivalent to the Organization's contribution to the Pension Fund had the Applicant continued without any break in service. The Tribunal considered that that was an "exceptional case" justifying the payment of compensation higher than the usual two years of net salary owing to the extent of the injury to the Applicant when, in disregard of his proposal that his contract be honoured by placing him in another post following the resignation of the High Commissioner, he was abruptly separated from the Organization despite the existence of a valid appointment through 31 December 1991. Taking into account the apparent good faith of the Respondent, the Tribunal denied the Applicant's other pleas.

4. JUDGEMENT NO. 533 (28 OCTOBER 1991): ARAIM V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[6]

Claim by a United Nations staff member for rescission of decision to fill the D-1 post under the replacement procedure established in General Assembly resolution 35/210 instead of under the Vacancy Management

System—Article 101 of the Charter of the United Nations—The Applicant's claim falls within the jurisprudence established in Judgement No. 492, Dauchy (1990)

The Applicant, a staff member of the Centre against Apartheid at the P-5 level, had claimed that the D-1 post of Chief of the Committee Services and Research Branch in the Centre be filled under the Vacancy Management System, instead of under the replacement procedure of General Assembly resolution 35/210 of 17 December 1980, and that he be considered for the post.

The Tribunal noted that resolution 35/210 allowed the replacement by candidates of the same nationality as the previous incumbents in respect of posts held by staff members on fixed-term contracts, whenever it was necessary to ensure that the representation of Member States whose nationals served, primarily on fixed-term contracts was not adversely affected. The Tribunal further noted that when the Assistant Secretary-General of the Centre against Apartheid wrote to the Applicant explaining that particular attention had been given to his possible candidature but that it had been decided that the post would be filled on a fixed-term basis, "in view of . . . the need to retain flexibility in staffing in the light of the changing constraints under which the Centre has to operate [and] the need to maintain a geographic balance in the composition of the senior staff of the Centre," that neither of these reasons had cited resolution 35/210. The post had been filled by replacing the incumbent with another individual of the same nationality (Ukrainian).

The Tribunal, recalling Judgement No. 492, *Dauchy* (1990), observed that if the Respondent "reasonably considered it necessary to employ the replacement procedure in order to avoid the adverse effect described in resolution 35/210, he was justified in designating a Ukrainian to fill the D-1 post in question, though he was not obliged to do so". However, as the Tribunal pointed out, in the circumstances of the present case, the Respondent was obliged to comply with "the paramount consideration in the employment of the staff", as set forth in Article 101 of the United Nations Charter, by giving fair and full consideration to any eligible candidate who aspired to the vacant post and was reasonably capable of fulfulling its needs. While not doubting the truth of the Assistant Secretary-General's statement that the Applicant was given "serious and full consideration" for the post, the Tribunal took into account the fact that consideration was necessarily given against the background of resolution 35/210: only if no satisfactory Ukrainian candidate had been found could the Applicant have been selected.

While the Tribunal was aware that even if the post had been filled by the Vacancy Management System the Applicant might not have been selected, it concluded that his "chance of success was necessarily precluded once the Respondent had decided to fill the post by replacement."

For the above reasons, the Tribunal awarded $5,000 as compensation for the injury suffered by the Applicant, and rejected all other pleas.

5. JUDGEMENT NO. 535 (29 OCTOBER 1991): SHATILOVA V. THE SECRETARY-GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[7]

Non-renewal of a fixed-term contract solely because the consent of the Government of the staff member concerned was not obtained—Resolution A14/6 of the ICAO Assembly—No evidence in the file that the Applicant was in government service—The Respondent's error of law vitiates the non-renewal decision—The judgement does not weaken articles 58 and 59 of the Chicago Convention

The Applicant, a national of the USSR, entered the service of ICAO in June 1989 with a two-year fixed-term contract. Her request that the contract be renewed was not granted. The Respondent based his decision mainly on legal grounds. According to resolution A14/6 of the ICAO Assembly, "in cases where it is desired to recruit a person from the Government service of a Contracting State, the Secretary-General shall take all practical steps to obtain the consent and cooperation of that State." The consent was not obtained.

In view of all the information in the file, the Tribunal considered that at the time when the Applicant had requested the renewal of her contract she was not in the "Government service of a Contracting State" in the sense of paragraph 3 of resolution A14/6 of the ICAO Assembly. The Respondent was therefore not obliged to request the consent of the USSR Government in order to proceed with the renewal of the contract.

The Tribunal further stressed that the application of paragraph 3 of resolution A14/6 was not affected by the judgement, provided that the candidate for recruitment to the international civil service was in the government service of a Contracting State and had not left the service of his Government.

The Tribunal concluded that the Respondent, by requesting such consent and basing his decision on the USSR's refusal to give its approval, had committed an error of law. Under the circumstances, the Tribunal considered that the error vitiated the decision taken by the Secretary-General of ICAO.

However, the Tribunal added that by its decision in the present case, it did not wish to weaken the provisions in the Chicago Convention, namely, articles 58 and 59, which speak to ICAO's authority to determine terms and conditions of service of its staff members. The Tribunal further stressed that the application of paragraph 3 of resolution A14/6 was not affected by the judgement, provided that the candidate for recruitment to the international civil service was in the government service of a Contracting State and had not left the service of his Government.

For the foregoing reasons, the Tribunal awarded monetary compensation and requested the Secretary-General to re-examine the Applicant's request for renewal of her contract, and rejected all other pleas.

6. JUDGEMENT NO. 537 (1 NOVEMBER 1991): UPADHYA v. THE SECRETARY-GENERAL OF THE UNITED NATIONS[8]

Non-selection for a D-1 post—Interpretation of Judgement No. 401, Upadhya (1987)—Question of the validity of the Vacancy Management System—Ending of the emergency which gave rise to the Vacancy Management System requires the Secretary-General either to end the temporary suspension of staff rule 104.14 or comply with article XII of the Staff Regulations

The Applicant appealed his non-selection to a D-1 post pursuant to the Vacancy Management System. He also questioned the validity of the Vacancy Management System and asserted that the system had resulted in ongoing damage to the development of his career, because of the concomitant suspension of staff rule 104.14. Finally, the Applicant complained that the decision appealed from in the present case represented a failure of the Secretary-General to abide by an earlier judgement of the Tribunal (No. 401, *Upadhya* (1987)).

At the outset, the Tribunal rejected the Applicant's argument that his non-selection for the D-1 post represented a lack of implementation of Judgement No. 401. The Tribunal observed that that judgement had not called for more than future monitoring of the Applicant's career to avoid it being prejudiced by the events which had given rise to the judgement, nor for special consideration for any particular D-1 post. The Tribunal further observed that it had not been established that the Applicant's non-selection for the post in question was related to the events surrounding Judgement No. 401.

As to the validity of the Vacancy Management System, the Tribunal was of the opinion that, though the system was accompanied by some degree of confusion in its initial implementation, no "formal" suspension or amendment of the relevant staff rules governing promotion was required in order for the Vacancy Management System to become effective and that the introduction of the system could not reasonably have been understood as anything other than a temporary suspension of staff rule 104.14 as an emergency measure. Moreover, explanations on the proposed new system provided to the staff representatives, and Secretary-General's bulletin ST/SGB/221 and administrative instruction ST/AI/338, in the absence of a revocation of staff rule 104.14, described a temporary system. Furthermore, the reports of the Secretary-General, setting out the essential features of the Vacancy Management System, informed the General Assembly with sufficient clarity that staff rule 104.14 was being suspended temporarily as part of the Secretary-General's emergency efforts to deal with the Organization's financial crisis.

The Tribunal observed that none of the resolutions adopted by the General Assembly in response to each of the 1987, 1988 and 1989 reports of the Secretary-General on the matter reflected a decision with respect to the applicability or effect of article XII of the Staff Regulations on the Vacancy Management System, but, since the financial emergency which had precipitated the Vacancy Management System was continuing, the authority of the Respondent to maintain the system also continued. If the

General Assembly had regarded the actions of the Respondent during the emergency period as not being within his authority as Chief Administrative Officer or as necessitating the submission of new staff rules, it would presumably have made that known in one or more of those resolutions. Yet, there was no such indication on the part of the General Assembly. Accordingly, the Tribunal did not find either the adoption of the Vacancy Management System by the Secretary-General as a temporary emergency measure and its continuation for the duration of the emergency, or the accompanying implicit suspension of staff rule 104.14, as being outside the Secretary-General's discretionary authority as chief administrative officer.

Consequently, the Tribunal stated that the Applicant's claims, based on his contention that he had been improperly deprived of consideration for promotion under the annual promotion register procedure provided for by staff rule 104.14, must fail.

After reviewing the facts the Tribunal also concluded that the Applicant had failed to establish discrimination against him in the selection process under the Vacancy Management System procedures.

Having noted the Respondent's statement that the emergency which had given rise to the Vacancy Management System had ended at the close of 1989, the Tribunal observed that, upon the ending of the emergency and to avoid conflicting with the Staff Regulations and the rights of staff members, particularly the right to be reviewed for promotion under staff rule 104.14, "a rule of major importance to the career of staff members", the Respondent had to end the temporary suspension of staff rule 104.14 or comply with article XII of the Staff Regulations within a reasonable period. The Tribunal considered that such a reasonable period would end three months after the date of notification of the judgement.

For the foregoing reasons, subject to the above paragraph, the Tribunal rejected the Applicant's plea that the Vacancy Management System was invalid at the time of the contested decision as well as other pleas of the Applicant.

7. Judgement No. 546 (14 November 1991): Christy, Thorstensen and White v. United Nations Joint Staff Pension Board[9]

The Applicants' claims challenge complex changes to pensionable remuneration—General Assembly resolution 44/199 amending article 54 (b) of the Joint Staff Pension Fund Regulations—The required conditions for the modification of the pension system—It is not within the competence of the Tribunal to substitute its judgement for that of the General Assembly in respect of the matters in question

The Applicants, participants in the Pension Fund, claimed that in the application by the Fund of the new methodology for the adjustment of pensionable remuneration introduced by the General Assembly, there was a retroactive reduction of their pensionable remuneration. In particular, the Applicants contested the validity of a decision by the Standing Committee of the United Nations Joint Staff Pension Board affirming the

action by the Secretary of the Board in adhering to the revised scale of pensionable remuneration for Fund participants in the Professional and higher categories which had been established by the General Assembly in its resolution 44/199 of 21 December 1989, effective as of 1 January 1990. That resolution amended article 54 (*b*) of the Joint Staff Pension Fund Regulations, and the revised scale had been made effective by the Board on 1 February 1990. The amendment of the Fund Regulations relevant to the applications in question dealt with the adjustment procedure used in determining pensionable remuneration.

The Applicants asserted that the changes made by the General Assembly which they challenged were in violation of the Applicants' right to the maintenance of an effective and just pension system.

The Tribunal observed that it had previously held and reiterated that the Fund was under an obligation to maintain an effective and just pension system. But that did not mean that the system might not be modified so long as the modifications were not arbitrary, were in conformity with the objectives of the pension system and promoted the implementation of the principles laid down in Article 101 of the Charter of the United Nations.

The Tribunal stated that it was unable to find on the facts of the case any violation of those principles. It was within the province of the General Assembly, following the advice of the International Civil Service Commission, the Board and others, to make reasoned judgements with regard to the pension adjustment system as in the present case, which it viewed as correcting a feature introduced in 1987 that had become erroneous by the time it was applied in 1988 and 1989. It was not for the Tribunal to attempt to evaluate the complex considerations involved in making determinations as to comparable income replacement ratios, or the effect on comparable pensions of changes in the United States tax laws, or similar matters. Those were properly matters for the General Assembly's judgement. And it was surely not within the competence of the Tribunal to substitute its judgement for that of the General Assembly with respect to matters of that nature.

Once it was clear, as it was in the present case, that modifications were not arbitrary or abusive, but instead had a reasonable basis and were in conformity with the objectives of the pension system, there was no occasion for the Tribunal to intervene. Increases in pensionable remuneration resulting from unjustified adjustments were not among the objectives of the system. It could not be said, therefore, that the modifications made were in conflict with any principles laid down in the Charter of the United Nations, much less that they could reasonably be regarded as improperly unfavourable to staff members, or destructive of staff members' rights to a pension system. On the contrary, nothing in the Charter or in common sense suggested that prospective correction of flawed past procedures or reasonable changes which resulted from unforeseen developments were necessarily prohibited.

For the foregoing reasons, the Tribunal rejected the applications in their entirety.

B. Decisions of the Administrative Tribunal of the International Labour Organisation[10]

1. JUDGEMENT NO. 1064 (29 JANUARY 1991): IN RE UNNINAYAR (NO. 2) V. WORLD METEOROLOGICAL ORGANIZATION[11]

Application for the interpretation of point 2 of the Tribunal's decision in Judgement No. 972—Question of receivability of application—In absence of anything to the contrary the meaning of the term "rates" should be interpreted in accordance with the clear intent of point 2 of the decision

The complainant, a former staff member of the World Meteorological Organization, had requested interpretation of point 2 in the Tribunal's decision in Judgement No. 972, which reads: "The Organization shall pay the complainant the equivalent of two years' salary and allowances at the rates that obtained at the date of his separation as damages for material injury." The complainant claimed that the term "rates" in the passage referred to rates of salary and allowances, whereas WMO contended that the term referred to the rate of exchange between the United States dollar and the Swiss franc.

The Organization also contended that the application was not submitted in time (Judgement No. 972 delivered on 27 June 1989 and application filed on 3 April 1990) and that it should have been filed within a reasonable time, namely, 90 days. The Tribunal noted that WMO had paid into the complainant's account on 24 July 1989 what it considered to be the principal sum due, and sent a reckoning of that sum to the complainant's counsel on 20 September 1989. On 13 December 1989 the counsel protested that the amount was incorrect, and on 14 February 1990 WMO informed the counsel that it maintained its position. The complainant filed his application on 3 April 1990. The Tribunal looked at the circumstances in which the claim was made in order to determine what constituted "a reasonable time". The Tribunal, noting that there was no time-limit in the statute of the Tribunal or in its rules of Court for the filing of such an application and that in its Judgement No. 538, *in re* Djoehana (No. 2), the Tribunal had granted an application filed on 2 April 1982 for interpretation of a judgement it had delivered on 13 November 1978, declared the complainant's application receivable.

The Organization further contended that, in accordance with the Tribunal's decision in Judgement No. 802, *in re* van der Peet (No. 10), an application for interpretation was receivable only if the operative part of the judgement was "ambiguous or otherwise unclear". The Tribunal concluded that the present application concerned the meaning of the term "rates" and therefore qualified under the rule as stated in that judgement.

As to the merits of the case, the Tribunal noted that the counsel had instructed WMO to pay the amounts (for both material and moral injuries) due the complainant under Judgement No. 972 into the complainant's Swiss bank account. It was the view of the Tribunal that in the absence of any stipulation that the amount due under point 2 should be paid in United States dollars and of any indication that the complainant's account was or

had become a dollar account, the only reasonable interpretation of counsel's instructions was that the amount should be paid in Swiss francs (which was the denomination indicated in damages for moral damages in point 3 of the Tribunal's decision).

The Tribunal, noting that nowhere in the judgement was there any allusion to a "rate of exchange", concluded that the only meaning the term "rates" in point 2 could bear was "rate of salary" and "rate of allowance," and that the clear intent was that the complainant should receive a lump sum totaling two years' salary and allowances for material injury in the currency in which his salary and allowances were denominated (United States dollars), converted on his instructions into Swiss francs.

The Tribunal held that the Organization should reckon the amount due to the complainant in accordance with the above decision and pay him interest on the amount not yet paid. The complainant was awarded 5,000 Swiss francs in costs.

2. JUDGEMENT NO. 1077 (29 JANUARY 1991): IN RE BARAHONA (JANICE) V. PAN AMERICAN HEALTH ORGANIZATION (WORLD HEALTH ORGANIZATION)[12]

Complainant submits that by refusing to appoint her to a post the Director abused his discretionary authority—An international organization's appointment decisions subject only to limited review by the Tribunal—Procedural defects of the selection process—Provision 344 of the PAHO/WHO Manual requires that the process of evaluation must not only be fair but also be seen to be fair

The complainant, a staff member of the Pan American Health Organization (PAHO) at the P-2 level, had claimed that the Director had abused his discretionary authority when he did not appoint her to the P-3 post of English editor. The complainant alleged that there were a number of procedural defects in the selection process. In June 1986, a Selection Committee had recommended her for the post, but the Personnel Department had failed to pass the recommendation on to the Director. In September 1986, the post was "frozen" due to a suspension of recruitment. Nevertheless, a temporary employee was improperly recruited in October 1986 to perform the duties of the post. On 16 June 1988, the post was again advertised as vacant, and the complainant and others applied for and took a test of editing skills, but PAHO failed to "quantify" the results in contravention of the PAHO/WHO Manual. The second Selection Committee, however, recommended the temporary employee, who had been one of the candidates, to fill the post and the recommendation was accepted by the Director on 22 September 1988. The complainant requested that this decision be quashed and that the first Selection Committee's recommendation be implemented, namely, that she be appointed to the post.

As the Tribunal had often declared, a decision by an international organization to make an appointment was a discretionary one and could only be quashed if it "was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some essential fact has been overlooked, or if there was abuse of author-

ity, or if a clearly mistaken conclusion has been drawn from the evidence." Further, the Tribunal explained that in cases like the present one it would exercise its power of review "with special caution, its function being not to judge the candidates on merit but to allow the Selection Committee and the executive head full responsibility for their choice".

Having considered the complainant's pleas, the Tribunal determined that there was no abuse of the Director's discretionary authority, "since the first process of selection never reached the stage where the Director had to decide whether or not to appoint the complainant". Moreover, there was no breach of the PAHO/WHO Manual provisions in not submitting the 1986 recommendation to the Director, or to appoint her within the three-month period before the post was frozen. Furthermore, the Tribunal determined that since urgent work had to be done, the recruitment of the temporary employee was not improper and that when the freeze ended in 1988 the lapse of nearly two years warranted starting a second selection process.

However, the Tribunal determined that the failure to quantify the results of the 1988 test still deprived the Selection Committee of the means of "evaluating and making meaningful distinctions among candidates", as provided for in the PAHO/WHO Manual, and that this represented a "fatal flaw" in the selection process. The Tribunal also observed that there was a further potential flaw in the process, arising from the fact that the candidates were required to write their names on the test, and if the papers had been marked there was always the risk of bias tainting the process. The Tribunal stated that the process of evaluation must not only be fair, as provided in provision 344 of the Manual, but also be seen to be fair.

Finally, the Tribunal considered the fact that the Organization had recruited two temporary editors after the implementation of the recruitment freeze, against funds earmarked for two posts, one of which was the post in question, and subsequently recruited them for the posts after the freeze was lifted in 1988. In this regard, the Tribunal was of the opinion, in view of regulation 4.4 of the PAHO Staff Regulations which gives preference to inside candidates for promotion, all other things being equal, that this sort of action was bound, whether rightly or wrongly, to give inside candidates the impression of subterfuge. The Tribunal stated that "it is in the Organization's interests to avoid arousing suspicion that outside people are recruited under temporary appointments and, after some months' or even a few years' service, may get the opportunity of overtaking those who have served the PAHO well for much longer".

Stating that though the serious flaw in the 1988 process was to the complainant's detriment, the Tribunal did not think it fitting in the circumstances to quash the temporary employee's appointment. Instead it ordered the Organization to pay the complainant 12,000 United States dollars in damages for the injury she sustained and 1,000 dollars in costs. Her other claims were dismissed.

3. JUDGEMENT NO. 1095 (29 JANUARY 1991): IN RE GILLES V. EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)[13]

Complainant requests refund of all of the medical costs of her difficult confinement—Question of receivability of application—Article VII (3) of the statute of the Tribunal—Setting of maximum limits under sickness insurance scheme—Reliance of Eurocontrol on rules borrowed from other organizations

The complainant, a staff member of the European Organisation for the Safety of Air Navigation (Eurocontrol), had disputed the refund she received under the Sickness Insurance Scheme for the costs of her difficult confinement, asserting that she was entitled to a refund of her confinement expenses at the rate of 100 per cent, pursuant to article 72 of the Staff Regulations. She also argued that no maximum limits should be applied to her refund.

The Organisation contended that the application was irreceivable, alleging that the complaint had been filed before she had exhausted the internal remedies. The Tribunal noted that the complaint had been filed after the 60-day deadline for the Organisation to submit its answer under article VII (3) of the Tribunal's statute, but within the 4 months prescribed in articles 92 and 93 of the Staff Regulations. The Tribunal, rejecting the Organisation's argument, stated that once an organization has accepted the Tribunal's statute it may not derogate from it by citing internal rules of its own. The Tribunal added that the only difference Eurocontrol's own Staff Regulations might make was that it was estopped from objecting to receivability when, in reliance on its own time-limit, a staff member had filed a complaint that would be receivable under its Staff Regulations but out of time under article VII of the Tribunal's statute.

Eurocontrol had claimed that article 72 of the Staff Regulations empowered the Director General to make the rules for sickness insurance and that a stay in the hospital for the purpose of confinement was brought under the broader head of hospitalization for a surgical operation under rule No. 10. Under rule No. 10 (17), refunds were allowed for a difficult confinement requiring special obstetrical treatment or a surgical operation or prolonged stay in hospital for post-partum costs up to 100 per cent subject to the maximum amounts. Eurocontrol had assimilated the complainant's difficult confinement to a surgical operation, in category B of rule No. 10 (11), of which the costs were subject to maximum limits. Eurocontrol conceded that the rule did not liken a difficult confinement to a surgical operation, but said that it drew on rules in the European Communities which expressly treated a Caesarean section and a difficult confinement as surgical operations under category B.

The Tribunal, while in agreement with the complainant that she should be refunded at the full rate for her stay in the hospital and for the costs of her difficult confinement, stated that there was nothing wrong in principle with setting maximum limits, even when the 100 per cent rate reimbursement applied. However, there was doubt as to the way Eurocontrol had applied them in this case. The position of Eurocontrol remained unclear in

that the Tribunal could not determine what principles had governed the Organisation's determination of the refund. In the statements of account submitted to the complainant, Eurocontrol had produced no aggregate figure of the costs of the confinement and no proper breakdown giving the figure taken under each head of costs, the rate of refund, any maximum limit and references to the rules applying to each item.

While acknowledging that the reason the situation was unclear was that the rule did not spell out properly what was meant by applying the 100 per cent rate of reimbursement to the costs of a difficult confinement, the Tribunal concluded that at the material time there was no valid maximum limit on refund of the costs of medical treatment for a difficult confinement.

As for Eurocontrol's reliance on what was done in the European Communities, the Tribunal observed that it must put on its own Staff Regulations and rule No. 10 the construction they were designed and intended to bear and it could not borrow rules from other organizations.

The Tribunal held that the complainant must receive full reimbursement of the costs of her confinement and that the case should be sent back to Eurocontrol for a new decision in accordance with the principles set forth in the present judgement and in Judgement No. 1094, *in re* Gérard and others. She was also awarded 50,000 Belgian francs in costs.

4. JUDGEMENT NO. 1109 (3 JULY 1991): IN RE OULDAMAR (NOS. 1 AND 2) V. INTERNATIONAL LABOUR ORGANISATION[14]

Non-promotion pursuant to staff circular No. 334—Director-General's discretionary decision in promoting staff members may not ordinarily be set aside by the Tribunal unless there is some particular fatal flaw—Grounds on which an advisory body may rethink its recommendation

The complainant, a staff member with the International Labour Organisation at the P-4 level, had filed two complaints putting forward the same claims and resting on the same facts and, therefore, the Tribunal joined them. However, as the first complaint was found irreceivable because the complainant had not exhausted the internal means of redress as article VII (1) of the Tribunal's statute requires, the Tribunal considered only the second complaint, which was found receivable.

The complainant had claimed a personal promotion under staff circular 334, which applied to officials whose grade was not above that of the post occupied and who met a specified long-service requirement of at least 13 years' service in the grade from which he was promoted. Also required was "a clear demonstration that the official regularly performed at a level above the normal requirements of the job."

The Tribunal noted that as promotion was at the Director-General's discretion, the Tribunal could not set aside his decision unless there was some particular "fatal flaw"; breach of a procedural rule was such a flaw. The complainant contended that the Selection Board had acted in breach of paragraph 14 of circular 334 by failing to let him have a statement of the

reasons for the Director-General's refusal. Paragraph 14 said that if the Director-General's decision went against him the official "shall be furnished by the Selection Board with a brief statement of the reasons". That the explanation came directly from the Director-General himself in this case was not a procedural flaw. In the opinion of the Tribunal, paragraph 14 was unenforceable because the Board could explain only its own recommendation and because the text might require it to explain even a decision that ran counter to that recommendation.

The complainant also objected to the Selection Board meeting a second time—after a majority of its members had recommended granting him a personal promotion at the first meeting (issued report of 10 May 1989)—at the request of the Deputy Director-General in charge of General Administration, where two members of the Selection Board recommended promotion and two recommended against (supplementary report of 13 July 1989). It was the view of the Tribunal that the responsible officer could not ask an advisory body to think again on the pretext that its recommendation was unclear. Only in two cases could an internal body be asked to think again: one was where something unforeseeable and of decisive moment occured after it had reported, and the other was where there came to light some fact of evidence, again of cardinal importance, that it did not know of or could not have known of before it reported. The Selection Board itself asserted that its reconsideration of the complainant's promotion was based on what it termed a new item of evidence, namely, the Property Survey Committee's report, which reported on a misappropriation of funds during the period the complainant was Director of the ILO office in Yaoundé. However, the Tribunal observed that the report, which went back to 21 July 1986, was not an unforeseeable new fact, and could not have been unknown to the Board members, since their first report actually spoke of the complainant's troubled directorship in Yaoundé. The Tribunal concluded that because there was no sound reason in law for the Board to have met again, the Tribunal concluded that the impugned decision was tainted and could not stand.

The Tribunal held that the Director-General's decision should be set aside and that the case should be sent back to ILO for review. The Tribunal also ordered the Organisation to pay the complainant 2,500 Swiss francs in costs.

5. JUDGEMENT NO. 1118 (3 JULY 1991): IN RE NIESING (NO. 2), PEETERS (NO. 2) AND ROUSSOT (NO. 2) V. EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)[15]

Adjustments of sums refunded against educational expenses—Question of receivability of application regarding the adjustments in pay—The law of the international civil service—The Tribunal is fully competent when the relationship between the Organisation and its staff is at issue—Judgement No. 986, in re *Ayoub (No. 2) and others—The Tribunal may neither review the reasons of policy underlying the general decision nor say what rates of pay ought to be—Question of acquired rights—Conditions for breach of* res judicata*—Educational expenses are part of staff member's pay*

The complainants, staff members of the European Organisation for the Safety of Air Navigation (Eurocontrol), had disputed the effects of the adjustments on the sums refunded against educational expenses for the period from 1 July 1988 to 30 June 1989.

The present appeal is the result of the interlocutory order in Judgement No. 1096 of 29 January 1991, which requested from the Organisation fuller information on the process of adjustment and the reasons underlying it.

The Organisation reiterated its objection to the Tribunal's competence, stating that the Tribunal could not review the adjustments in pay because in approving them the Eurocontrol's Permanent Commission was wielding legislative authority vested in it by sovereign States. The Tribunal stated that though its main task was to enforce the written rules in disputes between the Organisation and its staff members, clear and consistent precedent made dealings between the two sides subject, not just to the material provisions of the Staff Regulations and the contract of employment, but also to a set of general principles that formed part of the law of the international civil service. Furthermore, in accordance with its Judgement No. 986, *in re* Ayoub (No. 2) and others, the Tribunal was "fully competent when the relationship between the Organisation and its staff is at issue, subject only to article XII of its statute."

Eurocontrol had begun to adjust the pay of its staff beginning on 1 January 1986, when the Protocol amending the Eurocontrol Convention came into force. The system of periodic adjustment in pay was used to bring in the differential between the European Communities and Eurocontrol salaries. The complainants objected to the salary adjustments made under article 65 of the Staff Regulations, which empowered the Permanent Commission, on proposals from the Director General and after discussion by the Committee of Management, to make the adjustments it deemed necessary. The adjustments were made by amending the basic salary scales in annex III, and they also affected the incidental items of pay set out in article 62, including education expenses.

The Tribunal, addressing the individual pleas of the complainants, did not agree with the complainants' contention that the Organisation had violated the principle of non-retroactivity. It noted that Eurocontrol had applied the 1.25 per cent adjustment to pay, which was finally approved on 30 March 1988, to entitlements for the period from 1 July 1988 to 30 June 1989.

As to the complainants' plea that the Organisation had failed to provide the reasons for the adjustments, the Tribunal noted that the individual decisions impugned were based on decisions by the only competent authority, the Permanent Commission, and that because the staff had known all along the reasons for the adjustments there was no need to state reasons for the individual decisions. As regards the reasons themselves, the Tribunal stated that while it could neither review the reasons of policy underlying the general decision nor say what rates of pay ought to be, it noted that the decision had been taken under article 65, which merely cited examples of circumstances warranting adjustment in pay and was not

exhaustive, and that the reasons cited by the Organisation for the adjustments were not factually incorrect and fell within the ambit of article 65.

Regarding the plea that the staff had an acquired right to alignment of pay with the scales of the European Communities, the Tribunal was in agreement with the Organisation's contention that there had never been anything but *de facto* alignment and the Organisation had made no express or implied commitment to continue it. The Tribunal noted that with the introduction of the differential, pay had actually risen.

As the Tribunal had stated in Judgement No. 986, it had "only a limited power of review in such matters and will declare whether the impugned decisions square with general principles, with the Staff Regulations and with the terms of the complainants' appointment". In this regard, the Tribunal concluded that Eurocontrol had abided by those principles, including the rule against breach of trust.

The Tribunal, dismissing the complainants' plea of breach of *res judicata*, stated that there would be no breach unless the cause of action and the claims—among other things—were the same, which they were not in the present case.

As to the complainants' contention that educational expenses could not be considered an item of pay because such expenses were paid on the strength of supporting evidence, the Tribunal, rejecting the argument, noted that in articles 62 and 67 of the Staff Regulations one item of pay was family allowances, which included the education allowance, of which educational expenses formed a part.

The complainants' argument concerning a breach of equal treatment, based on the ground that the reduction fell more heavily on staff members who incurred higher educational expenses, was also rejected because, as explained by the Tribunal, the same maximum limit on refund applied to everyone.

For the above reasons, the claims were dismissed.

6. Judgement No. 1125 (3 July 1991): In re Lehmann-Schurter v. Intergovernmental Organisation for International Carriage by Rail[16]

Continuation of the Organisation's contribution to a survivors' insurance fund—Competence of the Tribunal to review a case where outcome will affect only complainant's heirs—When the text of a rule is clear there is no need for any interpretation or consideration of the drafter's original purpose—The Tribunal's competence to review the competent authority's discretionary decision to set the amount of contribution—A construction which an international organization wilfully and consistently puts on a rule for years may become a binding element of personnel policy

The complainant, a retired staff member of the Intergovernmental Organisation for International Carriage by Rail, had claimed that the Organisation should continue to contribute after her retirement, at the rate of 15 per cent of her final yearly basic pay, to the survivors' insurance fund, the proceeds from which would go to her heirs upon her death.

The Tribunal stated that although the complainant herself would not derive the benefit, which ordinarily goes only to heirs, her own lack of financial entitlement did not bar her from requesting the Tribunal to enforce a provision of the Staff Regulations concerning insurance protection. Otherwise, there would be no remedy in law since beneficiaries would have only such entitlements as she would have secured for them.

The complainant was relying on article 25 (1) of the 1956 Rules, which by virtue of appendix I to the 1980 Staff Regulations was still in force, and reads:

> "Each year the Office shall enter in its budget a sum equivalent to 15 per cent of the basic salary of its serving permanent employees and the amounts of the insurance contributions set by the competent authority at the date of retirement of permanent employees. Those sums shall constitute and add to the insurance funds available for each employee . . ."

In the Tribunal's view, the requirement that the Organisation's budget included the amount of insurance contributions as determined by the competent authority at the date of the permanent employee's retirement meant that even after the employee retired the Organisation must continue paying into the fund. The Tribunal, in denying the Organisation's view that the literal construction of the rule could be disregarded on the grounds that the drafter's original purpose no longer was relevant, stated that when the text was clear there was no call for any interpretation or to take account of the drafter's purpose. Only where two provisions of the same text or two parallel texts were at variance would any attempt be made to reconcile them.

Furthermore, the Staff Regulations provided that, whereas for serving officials the contribution should be the equivalent of 15 per cent of gross salary, the Administrative Committee should set the amount for retired officials. However, the Tribunal, noting that the rules said nothing about the criteria the Committee should apply in doing so, stated that where the rule was silent the competent authority—here the Administrative Committee—did have discretion to set the amount of the contribution to be paid from the date of retirement, or to stop contributing upon her retirement. But its decision would not be immune from review by the Tribunal, which would interfere if it found "some mistake of fact or of law, or abuse of authority, or if an essential fact was overlooked, or if a patently wrong conclusion was drawn from the facts."

The Tribunal, after looking at the evidence concerning seven other individuals who were also able to claim under the insurance scheme, determined that it was "at least doubtful" whether the Organisation had put on a par employees in the same position in law and in fact. In this regard, the Tribunal noted that a construction which an international organization wilfully and consistently had put on a rule for years could become a binding element of personnel policy to be applied to everyone who was in the same position in law and in fact.

The Tribunal, noting that article 25 of the 1956 Rules empowered the Committee to set the amount of contributions after the date of the employee's retirement and that it must apply the rule reasonably, concluded that the decision it had taken in the present case was in breach of the rule and was therefore arbitrary.

For the above reasons, the Tribunal decided to set aside the impugned decision and requested the Organisation to review the complainant's claim and pay her 2,500 Swiss francs in costs.

C. Decisions of the World Bank Administrative Tribunal[17]

1. Decision No. 100 (20 June 1991): Jassal v. International Bank for Reconstruction and Development[18]

Non-selection to a post during 1987 Bank-wide reorganization—Discretionary authority of the Bank in the selection process—A decision of the Bank in this process may be overturned by the Tribunal only when this discretionary authority is abused—Standard of scrutiny established by the Tribunal applied to other reorganization cases of separation because of redundancy—Unsatisfactory performance prior to the reorganization not alone a basis for termination on the ground of redundancy—Question of the Applicant's qualifications for the redefined post left vacant after the reorganization

The Applicant, a former staff member of the International Bank for Reconstruction and Development (the Bank), who was at the time of the 1987 reorganization a Principal Audit Analyst at level 20 in the Internal Auditing Department (IAD), had claimed that he should have been selected for one of the audit analyst positions (levels 18, 19 and 20) which remained vacant after the reorganization. Not to have done so, he asserted, was an abuse of the Bank's discretionary authority.

The Tribunal observed that while a decision by the Bank to select a staff member for a particular post was within the discretionary authority of the Bank, the decision could be overturned by the Tribunal when that discretion had been abused: if the decision was "arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure" (*Suntharalingam*, Decision No. 5 (1981)). Moreover, pursuant to *de Raet* (Decision No. 85 (1989)), the Tribunal would not set aside a decision of the Bank unless it had been "reached in an arbitrary manner, involving, for example, unfairness, failure to allow the Applicant to state his case, or other departures from established procedures, bias, prejudice, the taking into consideration of irrelevant factors or manifest unreasonableness." The Tribunal noted that that standard of scrutiny had been applied to other cases arising from the reorganization in which staff members had been displaced from their former posts, on the ground of redundancy as a result of the redefinition of job duties or the reduction in the number of departmental posts.

In the present case, the Tribunal was of the view that because after the reorganization there was a post available for which the Applicant claimed to be qualified, but for which he was not selected, a finding of

redundancy "must turn upon a conclusion that the content of the position was so defined as to render its previous occupant no longer qualified to discharge its responsibilities", which was the contention of the Respondent. Moreover, in the Tribunal's opinion, unsatisfactory performance by a staff member prior to the reorganization could not alone furnish a basis for terminating service with the Bank on the ground of redundancy, because that would be "an improper use of the reorganization procedures in order to avoid the protections otherwise afforded by the Bank's governing documents—staff rule 7.01 in particular—for termination of employment and would therefore constitute *détournement de pouvoir*, subject to reversal by the Tribunal".

The Tribunal found that the Respondent had not provided any specific information that the audit analyst position had been redefined in so substantial a manner from the Applicant's pre-reorganization post of Principal Audit Analyst that he was no longer qualified for the new post. Moreover, it was concluded by the Tribunal that the only negative comments that could have been placed before the Selection Committee would have necessarily come orally from the Acting Director, who had been the Applicant's supervisor before appointment to the Selection Committee, and that those comments were contrary to the documentary evidence, including the recent performance evaluations of the Applicant's three immediate supervisors. The Tribunal noted that the Acting Director's negative views had been put in written form and had been backdated to show a date before the selection process, but were not made a formal part of the Applicant's personnel records until after the selection process.

The Tribunal, considering that the Acting Director of IAD had a considerable voice on the Selection Committee because of his technical expertise in the field, concluded that the Bank's decision that the Applicant was unfit for a level 20, or even a level 19, audit analyst position was found to be lacking in any evidentiary support and, therefore, constituted an abuse of discretion. The Tribunal also concluded that the Selection Committee's assertion that any shortfall in the Applicant's qualifications for those positions could not have been addressed by additional counselling and training was also "arbitrary and manifestly without rational basis."

The Tribunal held that the decision not to select the Applicant for the level 20 post should be rescinded and that the Applicant should be reinstated, and that the amounts already paid to him upon his separation from the Bank under the Enhanced Separation Package should be retained by the Applicant as compensation for injuries sustained by him for his non-selection. Furthermore, should the Respondent decide that the Applicant should be compensated in lieu of reinstatement, the Tribunal set this compensation in an amount equal to two years' net salary. A payment of $10,000 for costs was also awarded. All other pleas were dismissed.

2. DECISION NO. 105 (6 DECEMBER 1991): SINGH V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT[19]

Applicant's request for rescission of the 10-year employment ban imposed by the Bank—No sufficient evidence to support the Respondent's finding that the Applicant acted in bad faith and made wilful

misrepresentations—Procedural irregularities on the part of the Bank—The Applicant as a consultant has no right of contractual employment by the Bank after the term of his appointment has expired—Substantial compensation for the Bank's wrongful action not justified because of the Applicant's failure to inform himself about the fate of his divorce petition

The Applicant, a former staff member of the International Bank for Reconstruction and Development (the Bank) on short-term appointment, had claimed that when he filed medical insurance claims, amounting to approximately $16,000, on behalf of his former wife, who had received treatment between August and October 1988, he believed in good faith that they were still married. While divorce proceedings had been initiated by the Applicant on 2 June 1986, the couple had become reconciled, of which the Applicant had notified the Court by letter dated 12 August 1986. Apparently this letter was not brought to the attention of the judge who signed the divorce decree on 23 August 1986. The Applicant was not notified that his divorce was final, because he had failed to provide a stamped, self-addressed envelope for that purpose. After the Respondent learned that the Applicant was in fact divorced and had claimed medical benefits for his former wife, a disciplinary inquiry was initiated and it was subsequently determined that he should be banned from further employment with the Bank for a period of 10 years.

The Tribunal concluded that there was insufficient evidence to support the Respondent's finding that the Applicant had acted in bad faith and had made wilful misrepresentations. Not only had the Applicant ordered his affairs in a number of ways which made sense only if he believed that his marriage was continuing, but the nature of his former wife's medical treatment (treatment to cure her infertility problem) provided positive support of the Applicant's claim that he believed he was married. The Tribunal also concluded that no conclusive evidence was produced to support the other charges that the Applicant had made misrepresentations on his personal history form and had made personal telephone calls and sent telegrams and charged them to the Bank.

The Tribunal also commented on the procedural irregularities it had found during its consideration of the case. The charges involving misrepresentations made by the Applicant on his personal history form and unauthorized communications made and charged to the Bank by the Applicant were introduced by persons representing the Bank before the Appeals Committee that was seized with review of the charge of the alleged fraudulent medical claim. In the Tribunal's view, the Bank's procedures for administrative review contemplated that the Appeals Committee would review a decision already made by a supervisor who acted on the basis of a full and fair consideration of the pertinent facts, which was not the case in respect of the new charges. In addition, the Bank refused to consider the possibility of the Appeals Committee reopening its proceeding in the light of "significant newly discovered evidence", and instead insisted that the Applicant submit that evidence to the Tribunal. It was the Tribunal's opinion that the better course would have been for the Bank to reserve the discretion, in appropriate cases, to urge such reopening, rather

than in all cases insist on the much more formal procedures of the Administrative Tribunal.

The Tribunal allowed the Applicant's first plea, namely, to rescind the contested decision, thus lifting the employment ban against the Applicant. However, the Tribunal pointed out that as the Applicant had worked with the Bank as a consultant on short-term contracts he had no right to further employment after his last contract expired, but rather could be considered for further employment. The Tribunal also held that the Applicant was largely to blame for his own failure to inform himself on the fate of his divorce petition; hence it did not award substantial compensation for the Bank's wrongful action. The Tribunal awarded $6,000 in compensation and $22,063.17 in costs. All other pleas were rejected.

NOTES

[1] In view of the large number of judgements which were rendered in 1991 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest have been summarized in the present edition of the *Yearbook*. For the integral text of the complete series of judgements rendered by the three tribunals, namely, Judgements Nos. 502 to 546 of the United Nations Administrative Tribunal, Judgements Nos. 1097 to 1164 of the International Labour Organisation and Decisions Nos. 100 to 105 of the World Bank Administrative Tribunal, see, respectively: documents AT/DEC/502 to 546; *Judgements of the Administrative Tribunal of the International Labour Organisation*: 71st and 72nd Ordinary Sessions; and *World Bank Administrative Tribunal Reports*, 1991.

[2] Under article 2 of its statute, 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 Secretariat of the United Nations or of the terms of appointment of such staff members.

The Tribunal shall be open: (*a*) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death; and (*b*) to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: the International Civil Aviation Organization and the International Maritime Organization. In addition, the Tribunal is competent to hear applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund.

[3] Mr. Roger Pinto, President; Mr. Jerome Ackerman, Vice-President; and Mr. Ioan Voicu, Member.

[4] Mr. Jerome Ackerman, First Vice-President; Mr. Ahmed Osman, Second Vice-President; and Mr. Luis de Posadas Montero, Member.

[5] Mr. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; and Mr. Ahmed Osman, Second Vice-President.

[6] Mr. Roger Pinto, President; Mr. Jerome Ackerman, Vice-President; and Mr. Arnold Kean, Member.

[7] Mr. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; and Mr. Ahmed Osman, Second Vice-President.

[8] Mr. Roger Pinto, President; Mr. Jerome Ackerman, First Vice-President; and Mr. Ahmed Osman, Second Vice-President.

[9] Mr. Roger Pinto, President (dissenting opinion); Mr. Jerome Ackerman, Vice-President; and Mr. Arnold Kean, Member.

[10] The Administrative Tribunal of the International Labour Organisation 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 Organisation and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1991, the World Health Organization (including the Pan American Health Organization), the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organisation for the Safety of Air Navigation, the Universal Postal Union, the European Patent Organization, the European Southern Observatory, the Intergovernmental Council of Copper-Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization, the African Training and Research Centre in Administration for Development, the Intergovernmental Organisation for International Carriage by Rail, the International Center for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization, the International Fund for Agricultural Development and the International Union for the Protection of New Varieties of Plants. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organisation and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organisation.

The Tribunal is open to any official of the above-mentioned organizations, even if his employment has ceased, to any person on whom the official's rights have devolved on his death and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the staff regulations upon which the official could rely.

[11] Mr. Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; and the Right Honourable Sir William Douglas, Deputy Judge.

[12] Mr. Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; and Miss Mella Carroll, Judge.

[13] Mr. Jacques Ducoux, President; Miss Mella Carroll, Judge; and Mr. Pierre Pescatore, Deputy Judge.

[14] Mr. Jacques Ducoux, President; Miss Mella Carroll, Judge; and Mr. Edilbert Razafindralambo, Deputy Judge.

[15] Mr. Jacques Ducoux, President; Miss Mella Carroll, Judge; and Mr. Pierre Pescatore, Deputy Judge (dissenting opinion).

[16] Mr. Jacques Ducoux, President; Tun Mohamed Suffian, Vice-President; and Mr. Edilbert Razafindralambo, Deputy Judge.

[17] 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 Devel-

opment Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as "the Bank Group").

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[18] Mr. Prosper Weil, President; Mr. A. Kamal Abul-Magd and Mr. Elihu Lauterpacht, Vice-Presidents; and Mr. Fred K. Apaloo, Mr. Robert A. Gorman, Mr. Eduardo Jiménez de Aréchaga and Tun Mohamed Suffian, Judges.

[19] Mr. Prosper Weil, President; Mr. A. Kamal Abul-Magd and Mr. Elihu Lauterpacht, Vice-Presidents; and Mr. Fred K. Apaloo, Mr. Robert A. Gorman, Mr. Eduardo Jiménez de Aréchaga and Tun Mohamed Suffian, Judges.

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. Question whether the United Nations emblem may be used on the flag of a national military contingent in United Nations peace-keeping operations together with the emblem and the colours of the State concerned—Relevant provisions of the United Nations Flag Code and Regulations to implement the Flag Code

Note to the Permanent Mission of a Member State

The Secretariat of the United Nations presents its compliments to the Permanent Mission of (name of a Member State) and has the honour to refer to the Mission's note dated 28 May 1991 requesting the authorization of the Secretary-General to use the emblem of the United Nations on a flag to be established for a military contingent in the United Nations peace-keeping operations.

The proposed flag would feature, on one side, the emblem of the United Nations on a United Nations blue background with the inscriptions "UN" in each corner and, on the other side, the symbol of the State concerned, i.e., the eagle, together with the national colours. The national eagle symbol would also be placed at the top of the pole carrying the combined flag, which is also trimmed with gold braid at the edges on both sides.

The Secretariat of the United Nations has considered the appropriateness of the proposed flag in the light of the United Nations Flag Code, issued by the Secretary-General on 19 December 1947, pursuant to General Assembly resolution 167 (II) of 20 October 1947, as amended on 11 November 1952, and in the light of the Regulations issued by the Secretary-General to implement the Flag Code, the latest of which became effective on 1 January 1967.

Article 1 of the Flag Code provides that:

> "*The Flag of the United Nations shall be the official emblem of the United Nations, centred on a United Nations blue background.* Such emblem shall appear in white on both sides of the flag except when otherwise prescribed by regulation . . ." (emphasis added)

Article IV (*e*) of the regulations to implement the Flag Code provides that:

> "No mark, insignia, letter, word, figure, design, picture or drawing of any nature shall ever be placed upon or attached to the United Nations Flag or placed upon any replica thereof."

The Secretariat of the United Nations notes that the proposed flag consists of an alteration to the United Nations flag which diminishes its distinctive appearance, combined with a different design and insignia attached thereto. The Secretariat of the United Nations is of the view that such treatment of the United Nations flag is contrary to the Flag Code and Regulations to implement the Flag Code, and therefore regrets to inform the Permanent Mission that the Secretary-General has concluded that it would not be appropriate to consent to the proposed flag.

The Secretariat of the United Nations notes in this connection that the Head of Mission of a peace-keeping operation may in appropriate circumstances allow a military contingent to fly the United Nations flag itself.

26 June 1991

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2. QUESTION WHETHER, IN THE LIGHT OF GENERAL ASSEMBLY RESOLUTION 44/46 OF 8 DECEMBER 1989, ACTIVITIES RELATED TO THE INTERNATIONAL SPACE YEAR MAY BE FINANCED THROUGH VOLUNTARY CONTRIBUTIONS FROM SOURCES OTHER THAN STATES—USE OF THE UNITED NATIONS NAME AND EMBLEM IN SOLICITING FUNDS

Memorandum to the Chief, Outer Space Division, Department of Political and Security Council Affairs

1. This refers to your memorandum of 26 March requesting our views on proposals for fund-raising to finance activities related to the International Space Year, 1992 (ISY), in particular the holding, in cooperation with the Department of Public Information, of the "Home Planet" Exhibition (the Exhibition) and of the "Global Television Special and Video Series" (the Television Special). We understand that the producers of these activities have been advised that if the Exhibition or the video telecast are to take place, the execution of these activities "... shall be undertaken at no cost to the United Nations but with funding to be provided by corporations or individual donors that are acceptable in the United Nations".

Authority to carry out fund-raising to finance ISY activities

2. The General Assembly, in paragraph 21 of its resolution 44/46 of 8 December 1989, stated the following:

> *"The General Assembly ...*

"*Endorses* the recommendation of the Committee [on the Peaceful Uses of Outer Space] that international cooperation should be promoted through the International Space Year, which should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries, and that, in that context, the training and educational capabilities of the United Nations Programme on Space Applications should be utilized to bring about a meaningful role for the United Nations, *through voluntary contributions by Member States* and without any impact on the regular budget on the United Nations or the existing programme of work of the Programme" (emphasis added).

3. In his note verbale of 17 December 1990 to all Member States on the participation of the United Nations in ISY, the Secretary-General reminded Member States that "... in endorsing the participation of the United Nations in the International Space Year, the General Assembly directed that the activities should be implemented '*through voluntary contributions by Member States* and without any impact on the United Nations regular budget or the existing programme of work of the Programme' (*Official Records of the General Assembly, Forty-fourth Session, Supplement No. 20*, A/44/20, para. 117) ..." (emphasis added). The Secretary-General also indicated that a trust fund had already been established for the United Nations Programme on Space Application which would "also receive the *voluntary contributions from Member States* in support of the implementation of the activities planned ... for the participation of the United Nations in the International Space Year" and that "*the full support and co-operation of all Member States* will enable the United Nations to carry out the planned United Nations-ISY activities for the benefit of all Member States" (emphasis added).

4. In the light of the above, it appears that under the literal meaning of the General Assembly mandate, the activities to be undertaken by the United Nations in the context of ISY are to be financed *solely* through voluntary contributions by *Member States*. In our view, therefore, there does not at present appear to be a legal basis for the United Nations to enter into fund-raising arrangements to finance those activities from private sources.

5. This interpretation is in line with the recent interpretation of Economic and Social Council resolution 1908 (LVII) of 2 August 1974 given by the Office of Legal Affairs in connection with a proposed agreement between the United Nations Centre on Transnational Corporations (UNCTC) and a university of one of the Member States to undertake a cooperative education programme in another Member State, which envisaged that activities would be financed through private fund-raising. Paragraph 6 of Economic and Social Council resolution 1908 (LVII) provides as follows:

"*The Economic and Social Council* ...

"6. *Decides* to establish an information and research centre on transnational corporations and requests the Secretary-General, pending further arrangements regarding the modalities of operation of

the centre, to set up, in accordance with Article 101 of the Charter of the United Nations, a nucleus of the centre in the light of the Secretary-General's report and the report of the Group, *and bearing in mind also that such a centre should be financed through the regular United Nations budget, without prejudice to any voluntary contributions from Member States*" (emphasis added).

We concluded that, under its present mandate, while UNCTC may receive additional resources from voluntary contributions by Member States, it was not authorized to undertake fund-raising activities from private sources. We recommend that the proper way for UNCTC to undertake such activities and receive such funds would be to obtain appropriate authority from the Economic and Social Council.

6. We have been informed, however, that the formulations of paragraph 21 of General Assembly resolution 44/46 and of the Secretary-General's note verbale of 17 December 1990 (referred to in paragraphs 2 and 3 hereabove), reflect concerns expressed by Member States that the ISY activities should not be financed from the regular budget; Member States on the other hand were not concerned to exclude the possibility of raising funds, on a voluntary basis, from sources *other* than Member States. We have also been informed that the States members of the Committee on the Peaceful Uses of Outer Space and its Scientific and Technical Subcommittee were fully aware of the fact that funds might be raised, on a voluntary basis, from sources *other* than Member States.

7. We further note, in this connection, that paragraph 85 of the report of the Committee on the work of its thirty-third session in 1990 merely provides for financing "through voluntary contributions" without express reference to "Member States" as the source of those contributions.

8. In view of the meaning apparently intended to be given to the words "through voluntary contributions by Member States" in paragraph 21 of General Assembly resolution 44/46 of 8 December 1989, we would recommend that the intention of Member States be clarified in the report of the Committee on the Peaceful Uses of Outer Space at its upcoming thirty-fourth session. In our view, the addition of wording such as "and other donors ..." or "and other sources ..." after the words "voluntary contributions by Member States" would constitute a sufficient legal basis for accepting contributions from private sources, including through fund-raising activities.

Use of the United Nations name and emblem in soliciting funds

9. We note that it is proposed that the producers of the Exhibition and the producers of the Television Special be requested to raise the necessary funds from corporations and private donors to cover all costs of the envisaged activities. The respective producers would also, we assume, retain a percentage of the funds raised as their fee. It would appear that solicitations for contributions by the producers for United Nations-sponsored activities will be made using the United Nations name in some form or another.

10. Under General Assembly resolution 92 (I) of 7 December 1946, the use of the United Nations name and emblem is not permitted without the authorization of the Secretary-General and such use for commercial purposes is prohibited. Accordingly, any solicitation for contributions by the producers using the United Nations name should first be submitted to the United Nations for approval.

11. We reviewed "the Home Planet Exhibition" report and noted the following statement:

> "... participating corporations will receive appropriate recognition within the exhibition, *and will have the right to call attention to their funding through pre-approved advertising and public relations* ... Carefully designated United Nations guidelines for public recognition will be rigorously applied". (emphasis added)

In that respect, we wish to point out that, while some form of acknowledgement by the United Nations for participating corporations' contributions may be acceptable, subject to prior review by and approval of the United Nations, any use of the United Nations name and emblem by the firms in their promotional material for advertising purposes would be objectionable under the commercial-use prohibition of General Assembly resolution 92 (I).

13 May 1991

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3. Question of the legal protection of the emblem and flag of the United Nations Children's Fund

Memorandum to the Director of the Office of Administrative Management, United Nations Children's Fund

1. This responds to the memorandum of 13 December 1990 from your Office seeking our advice on the request addressed to the Executive Director of UNICEF for authorization to carry the flag of UNICEF during the "Expedition Last Crossing", and also on a broader question regarding the use, in general, of the UNICEF flag.

Legal protection available to the UNICEF emblem

2. The limitations on the use of the UNICEF flag are invariably connected with the protection afforded to the UNICEF emblem which figures prominently in the flag, and the United Nations acronym in the UNICEF name. The UNICEF emblem is protected under the Paris Convention for the Protection of Industrial Property, as revised at Stockholm in 1967,[1] an international convention which contains rules governing the use of trademarks. Article 6 ter 1 (*a*) and (*b*) of that Convention protects the names and emblems of international intergovernmental organizations provided that those names and emblems have been registered with WIPO (this was done in 1975) and have been communicated to member States.

The protection provided by the Convention is that States party to the Convention agree "to prohibit by appropriate measures the use, without authorization by the competent authorities", of the names and emblems of international organizations. It follows that the UNICEF name and emblem as registered by UNICEF with WIPO in 1975 are effectively protected pursuant to article 6 ter of the Convention and that UNICEF can take action in countries party to the Convention to prevent their unauthorized use. This is a vital consideration given the fact that UNICEF licenses the use of its name and emblem to third parties who presume—and justifiably—that UNICEF has the right to grant such use and can prevent unauthorized users from infringing upon such licences.

Policy to be followed in authorizing the use of the emblem of UNICEF

3. From our investigation, it appears that, unlike the name and logo of the United Nations, the UNICEF emblem is not directly governed by General Assembly resolution 92 (I) of 7 December 1946. However, to the extent that the name of UNICEF contains the United Nations acronym, the use of the emblem on the official seal and emblem of the United Nations is equally circumscribed by General Assembly resolution 92 (I), which provides that "it is necessary to protect the name of the Organization and its distinctive emblem and official seal" and recommends "that Members of the United Nations should take such legislative or other appropriate measures as are necessary to prevent the use, without authorization by the Secretary-General of the United Nations, and in particular for commercial purposes by means of trade marks or commercial labels, of the emblem, the official seal and the name of the United Nations, and of abbreviations of that name through the use of its initial letters". It is, therefore, suggested that regulations should be adopted by the Executive Director similar to those governing the United Nations emblem to limit the use of the UNICEF emblem on the basis of the following criteria:

(*a*) The proposed activity for which permission to use the emblem is requested should be clearly supportive of the objectives of UNICEF and there should be a connection between the outside activity and the goals of UNICEF;

(*b*) It should not be a purely or primarily commercial venture for private profit;

(*c*) Adequate assurances should be obtained that misuse of the emblem will be prevented;

(*d*) Use of the emblem in such a way as to create the misleading impression that an outside activity is UNICEF-sponsored, if this is not in fact the case, should clearly not be permitted.

Regulations concerning the use of the United Nations flag

4. You may wish to know that, as far as the use of the United Nations flag is concerned, the General Assembly, by its resolution 167 (II) of 20 October 1947, authorized the Secretary-General to adopt a flag code, having in mind the desirability of a regulated use of the United Nations

flag and the protection of its dignity. Under this authority the Secretary-General issued a Flag Code on 19 December 1947 and amended it on 11 November 1952. The Secretary-General has issued Regulations implementing the United Nations Flag Code, the latest of which are those which became effective on 1 January 1967. The Code and the Regulations provide that the Flag may be displayed "by Governments, organizations and individuals to demonstrate support of the United Nations and to further its principles and purposes."

Authorization to use the UNICEF flag by the "Expedition Last Crossing"

5. We understand from the documents made available to us that the "Expedition Last Crossing" is a crossing of the American continent from Argentina to Alaska as a symbolic journey by five individuals concerned with environmental issues. It is suggested that, until UNICEF adopts its own regulations for use of its flag, consideration of the requested authorization to use the UNICEF flag, in the context of the expedition, should be on the basis of the criteria for the use of the UNICEF emblem in paragraph 3 above. In this connection, it should also be noted that in respect of the United Nations flag, and as provided in General Assembly resolution 92 (I) in respect of the use of the United Nations emblem and name, article 7 of the Flag Code and section IV of the Regulations specifically prohibit the use of the United Nations flag for commercial purposes or in direct association with an article of merchandise.

18 January 1991

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4. REQUEST TO USE THE UNITED NATIONS EMBLEM ON AN AIRCRAFT CHARTERED BY THE INTERNATIONAL ORGANIZATION FOR MIGRATION, ACTING AS EXECUTING AGENCY FOR THE UNITED NATIONS DISASTER RELIEF COORDINATOR—PRACTICE OF THE UNITED NATIONS REGARDING THE USE OF ITS NAME AND EMBLEM BY NON-UNITED NATIONS ENTITIES

Memorandum to the United Nations Disaster Relief Coordinator

1. This is in response to your cable of 16 Januay 1991, where you indicate that the International Organization for Migration (IOM) has been "working as executing agency for UNDRO" since the beginning of the repatriation operation resulting from the Gulf crisis in undertaking the transport of people and relief goods. You further explain therein that, in preparation for a second influx of people from Iraq and Kuwait, you "called upon bilateral donors during [a meeting on 15 January 1991] to put at the disposal of IOM the aircraft needed for this operation". In this regard, you indicate that the "IOM is writing to donor countries confirming the need for such aircraft and wishes to be allowed for identification purposes to use the

United Nations emblem on the planes". In indicating that you support this request, you have asked for the concurrence of this Office.

2. In our preliminary memorandum of 17 January to the Officer-in-Charge of the UNDRO/New York office, we explained that we needed additional information regarding certain aspects of the transport arrangements, particularly in respect of the terms governing the provision of aircraft by the Governments concerned and the extent of UNDRO control over the IOM-organized flights, in order to be in a position to review the subject request. In response, the Officer-in-Charge forwarded a copy of the fax that he received from your Deputy of 18 January addressing some of the queries presented in our memorandum and enclosing a copy of the fax sent by your Deputy to the IOM Director General of 3 September 1990. In particular, we note that your Deputy in responding to our query of whether any agreement was to be signed between UNDRO and the respective donor countries governing provision of the aircraft, indicates that such aircraft are to be loaned directly to IOM in the following terms:

> "With regard to aircraft loaned by Governments to IOM, UNDRO does not enter into any agreement and I am not sure that IOM does that in each case. The purpose of course would be the same, namely to repatriate refugees or displaced persons to their home countries within the United Nations Humanitarian Plan of Action for the region."

3. As you are probably aware, the use of the United Nations name and emblem is restricted by General Assembly resolution 92 (I) of 7 December 1946 by which the Assembly adopted the United Nations emblem. In that resolution, the Assembly recognized it as "desirable to approve a distinctive emblem of the United Nations and to authorize its use for the official seal of the Organization" and therefore resolved "that the design [of the United Nations emblem] shall be the emblem and *distinctive sign of the United Nations and shall be used for the official seal of the Organization*" (emphasis added). In the same resolution, the Assembly stated that it considered it necessary to protect the name and emblem of the United Nations, and recommended that its Member States:

> "should take such legislative or other appropriate measures as are necessary to prevent the use, without authorization by the Secretary-General of the United Nations, and in particular for commercial purposes by means of trade marks or commercial labels, of the emblem, the official seal and the name of the United Nations, and of abbreviations of that name through the use of its initial letters; . . ."

Thus, the terms of the resolution clearly indicate that: (*a*) the United Nations emblem is intended for official use by the Organization (including its principal and subsidiary organs); and (*b*) any non-United Nations use of the emblem, especially for commercial purposes, is prohibited without authorization from the Secretary-General.

4. Accordingly, it has been the practice of the United Nations to refrain from authorizing the use of the United Nations name and emblem in a manner which might imply that a non-United Nations entity is part of the United Nations or that activities being carried on by a non-United

Nations entity are being carried on by the United Nations or subject to its control. Authorization has none the less been granted, on appropriate occasions, for non-United Nations bodies supporting United Nations goals or programmes to use the United Nations emblem with the words "UNITED NATIONS" or the letters "UN" placed above the emblem and the words "WE BELIEVE" or "OUR HOPE FOR MANKIND" ("OUR HOPE FOR THE FUTURE") placed below the emblem if, in the relevant circumstances, it is clear that the display of the emblem with those accompanying words is intended as a demonstration of support for the United Nations. We would also mention that, in the particular case of requested use of United Nations decals on equipment, the Organization has taken the position that use of such decals on equipment not owned by the United Nations may be considered permissible where (*a*) the equipment is provided for the exclusive use of the United Nations and is being exclusively used by the United Nations and (*b*) identification of the equipment as equipment in United Nations use is deemed advisable.

5. In so far as IOM was established pursuant to the resolution adopted on 5 December 1951 by the Migration Conference in Brussels, and not by a resolution of the General Assembly, IOM is not a United Nations organ. As is reflected in its amended constitution adopted on 20 May 1987, IOM has the status of an autonomous organization, outside of the United Nations framework, with an independent juridical personality. As regards the repatriation transportation to be undertaken by IOM in the upcoming period, we understand from the information provided in the above-cited correspondence from your Office that (*a*) the aircraft to be used will be chartered by IOM (and not by UNDRO) or put at IOM's disposal by Governments and (*b*) the aircraft will be under the operational control and authority of IOM for the duration of the relief flights. Under these circumstances, it is our view that the display of the United Nations emblem on the exterior of these aircraft—which apparently are not owned, operated or controlled by the United Nations—would not be appropriate as it could give the misleading impression that such aircraft belong to the United Nations or are under its exclusive use or authority. While we acknowledge that IOM is carrying out this repatriation transportation operation in close cooperation with UNDRO, the fact that UNDRO sought IOM assistance or that it serves as the coordinating body for relief efforts in the area would not, in our opinion, render appropriate the use of the United Nations emblem on non-United Nations–owned aircraft under the operational control of IOM. Given the circumstances of the present case, we also do not consider that use by IOM of the above-mentioned modified version of the United Nations emblem would be appropriate, as the addition of the accompanying words to the United Nations emblem on the outside of the aircraft is unlikely to make it clear to the viewer (*a*) that no official use of the United Nations emblem is involved and (*b*) that the United Nations emblem is not being displayed as the emblem of the United Nations but simply as a demonstration of support of the United Nations.

21 January 1991

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5. Rules governing the award of compensation in the case of death, injury or illness of civilian police monitors of the United Nations Transition Assistance Group—Procedure for the submission and review of claims for compensation

Note to the Permanent Representative of a Member State

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of (name of a Member State) to the United Nations and has the honour to refer to the Permanent Representative's note to the Secretary-General of 12 November 1990 regarding injuries sustained by civilian police monitors on 22 March 1990 while on assignment with the civilian police unit of the United Nations Transition Assistance Group (UNTAG). In his note, the Permanent Representative inquires about the compensation for which the above-mentioned personnel are eligible "due to the fact that they suffered serious injuries during their tour of duty in Namibia".

The Legal Counsel wishes to inform the Permanent Representative that the applicable rules for the award of compensation in the case of death, injury or illness of an UNTAG civilian police monitor are contained in paragraphs 67 through 76 of the "UNTAG Notes for the Guidance of Police Monitors on Appointment". In this regard, the Legal Counsel wishes to highlight that under paragraph 67 of the UNTAG Notes, the United Nations provides maximum compensation coverage of a specified amount to each police monitor "for death, injury or illness determined by the Secretary-General to be attributable to the performance of official duties on behalf of the United Nations", while, under paragraph 68, no compensation shall be awarded when such death, injury or illness has been occasioned by either "the wilful misconduct of the monitor" or "the monitor's wilful intent to bring about death, injury or illness of himself or another". Paragraph 69 of the UNTAG Notes outlines the conditions under which death, injury or illness shall be deemed to be attributable to the performance of official duties on behalf of the United Nations in the absence of any wilful misconduct or wilful intent.

The Legal Counsel also wishes to bring to the attention of the Permanent Representative that paragraph 71 of the UNTAG Notes specifies the procedure for submission and review of claims for compensation by or on behalf of a police monitor. As appears from the paragraph reproduced below, the Advisory Board on Compensation Claims (ABCC) at United Nations Headquarters has been designated as the competent body to review such claims:

> "A claim for compensation by or on behalf of a Police Monitor shall be submitted through the Director of Administration to the United Nations Secretary-General by the Monitor, his/her dependants or his/her Government within four months of the Monitor's death, injury or onset of illness. In exceptional circumstances, the Secretary-General may accept for consideration a claim made at a later date. The Secretary-General has appointed an Advisory Board on Compensation Claims (ABCC) to review claims filed under the rules governing entitlement and to report to him regarding such claims

or appeals. The determination of the injury or illness and the type and degree of incapacity and of the relevant award shall be decided on the basis of the documentary evidence and in accordance with the provisions established by the Secretary-General."

On the basis of the above, the Legal Counsel wishes to advise the Permanent Representative that any claims for compensation on behalf of the persons in question should be submitted, with appropriate substantiating documentation, through the Director of the Field Operations Division at United Nations Headquarters, to the Secretary-General. Upon receipt of any such claims by the Secretariat, the appropriate review and assessment will be undertaken in accordance with the above-cited procedure.

18 January 1991

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6. Question whether the Governing Council of the United Nations Environment Programme could delegate its decision-making and approving powers to a subsidiary organ

Cable to the Secretary of the Governing Council of the United Nations Environment Programme

This is in response to your telefax of 25 May. In the context of the question whether the Governing Council of UNEP could entrust one of its subsidiary organs with the task of reviewing and approving certain measures such as establishing programme priorities and approving additional activities under a supplementary programme, you asked our advice as to whether the Governing Council could "delegate its decision-making and approving powers to a subsidiary body."

In the absence of a decision of the General Assembly, the answer to the question would be negative. The Governing Council is itself a subsidiary body of the General Assembly; its tasks and functions have been determined by the General Assembly and may not be changed without approval of the Assembly. Attention may be drawn in particular to section I, paragraph 2 (*b*), of General Assembly resolution 2997 (XXVII) of 15 December 1972, by which the Assembly decided that the Governing Council "shall have the following main functions and responsibilities: . . . (*b*) to provide general policy guidance for the direction and coordination of environmental programmes within the United Nations system".

It goes without saying that subsidiary bodies of the Council are fully entitled to consider and make recommendations to the Council or to implement Council decisions when requested. Rule 62 of the Council's rules of procedure should be understood as providing for the establishment of subsidiary organs for the effective discharge by the Council of its functions.

31 May 1991

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7. VOLUNTARY FUND FOR SUPPORTING DEVELOPING COUNTRIES PARTICIPATING IN THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT AND ITS PREPARATORY PROCESS, ESTABLISHED UNDER GENERAL ASSEMBLY RESOLUTION 44/228—QUESTION WHETHER GENERAL ASSEMBLY RESOLUTIONS 45/211 AND 45/248 A WOULD AUTHORIZE THE PAYMENT FROM THAT FUND OF DAILY SUBSISTENCE ALLOWANCE TO REPRESENTATIVES OF DEVELOPING COUNTRIES NOT BELONGING TO THE CATEGORY OF LEAST DEVELOPED COUNTRIES

Memorandum to the Executive Officer, United Nations Conference on Environment and Development

1. This is in response to your memorandum of 26 June 1991 requesting our advice on the interpretation of General Assembly resolutions 45/211 and 45/248 A both of 21 December 1990, regarding the use of the Voluntary Fund established by the General Assembly in its resolution 44/228 of 22 December 1989, in particular whether the said resolutions would authorize the payment of daily subsistence allowance (DSA) to representatives from developing countries, additional to such payments already being made to representatives from the least developed countries.

A. RELEVANT GENERAL ASSEMBLY RESOLUTIONS

2. Paragraph 15 of section II of General Assembly resolution 44/228 reads as follows:

> "*Decides* to establish a voluntary fund for the purpose of assisting *developing countries, in particular the least developed among them*, to participate fully and effectively in the Conference and in its preparatory process, and invites Governments to contribute to the fund;" (emphasis added)

3. Paragraph 8 of General Assembly resolution 45/211 reads as follows:

> "*Expresses its appreciation* to the Governments that have contributed to the Voluntary Fund for the United Nations Conference on Environment and Development, and invites Governments to contribute urgently and generously to the Fund in order that the operation of the Fund may enable *developing countries, in particular the least developed among them*, to participate fully and effectively in the Conference and in its preparatory process, in accordance with section II, paragraph 15 of General Assembly resolution 44/228;" (emphasis added)

4. Section XII of General Assembly resolution 45/248 A reads as follows:

> "*Approves the recommendation that, on an exceptional basis, payment be made for daily subsistence for representatives of the least developed countries* from the Voluntary Fund for Supporting Developing Countries Participating in the United Nations Conference on Environment and Development and its Preparatory Process;" (emphasis added)

B. ANALYSIS

5. In the report by the Secretary-General on the basis of which General Assembly resolution 45/248 A was adopted (A/C.5/45/65), it was indicated in paragraph 37 that the Voluntary Fund established by the General Assembly in its resolution 44/228 "would be utilized to pay for the *travel* of one representative for each eligible Member State to the sessions of the Preparatory Committee and to the Conference itself" (emphasis added). The report also transmitted, for General Assembly action, the decision of the Preparatory Committee adopted at its first substantive session (decision 1/3) that "payment be made from the Voluntary Fund *of travel expenses and, on an exceptional basis, daily subsistence allowance, for representatives of the least developed countries only.*"[2] (emphasis added).

6. While the provisions in the General Assembly resolutions quoted in section A above are relevant, we note in particular that section XII of resolution 45/248 A specifically limits permissible payments for daily subsistence. In our view, therefore, the limitation in that section (i.e., that payment for daily subsistence be restricted to representatives of the least developed countries) must be observed.

C. VOLUNTARY FUND FOR SUPPORTING PARTICIPATION IN THE NEGOTIATING PROCESS BY THE DEVELOPING COUNTRIES FOR THE PROTECTION OF GLOBAL CLIMATE FOR THE PRESENT AND FUTURE GENERATIONS OF MANKIND (CLIMATE FUND)

7. The above-captioned Climate Fund was established by the General Assembly in its resolution 45/212 of 21 December 1990, to be administered by the head of the ad hoc secretariat under the authority of the Secretary-General of the United Nations. Under paragraph 10 of that resolution, the purpose of the Climate Fund was "*to ensure that developing countries, in particular the least developed among them, as well as small island developing countries, are able to participate fully and effectively in the negotiating process . . .*" (emphasis added). No limitation as to its use similar to that imposed in respect of the Voluntary Fund of the Conference on Environment and Development was imposed. Furthermore, in the report of the first session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (4-14 February 1991), it was indicated[3] that the reimbursement from the Climate Fund would include subsistence (per diem) as well as travel costs of representatives from developing countries and that such arrangements were differentiated from the arrangements for the Preparatory Committee for the United Nations Conference on Environment and Development which provide for "the payment of travel costs for one representative per developing country, on request, and of *per diem to representatives of a limited category of developing countries, in that case the least developed countries*" (emphasis added).

8. We therefore have no legal objection to your interpretation of General Assembly resolutions 45/211 and 45/248 A that payments from the Voluntary Fund for the Conference on Environment and Development must be restricted to financing one ticket per delegate from a devel-

oping country and in addition payment of daily subsistence allowance to one delegate each from the least developed countries.

16 July 1991

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8. RESTRICTION IMPOSED ON THE GENERAL ASSEMBLY BY ARTICLE 12, PARAGRAPH 1, OF THE CHARTER OF THE UNITED NATIONS WHEREBY "WHILE THE SECURITY COUNCIL IS EXERCISING IN RESPECT OF ANY DISPUTE OR SITUATION THE FUNCTIONS ASSIGNED TO IT IN THE PRESENT CHARTER, THE GENERAL ASSEMBLY SHALL NOT MAKE ANY RECOMMENDATION WITH REGARD TO THAT DISPUTE OR SITUATION UNLESS THE SECURITY COUNCIL SO REQUESTS"—INTERPRETATION OF THAT RESTRICTION IN THE PRACTICE OF THE GENERAL ASSEMBLY

Memorandum to the Secretary of the Fourth Committee

1. This is in response to your memoranda of 3 and 7 October 1991 concerning the application of Article 12 of the Charter of the United Nations to discussions and decision-making in the Fourth Committee regarding Western Sahara issues during the forty-sixth session of the General Assembly.

2. Article 12, paragraph 1, of the Charter reads as follows:

> "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests."

3. Any analysis of Article 12 should of course first begin with the plain meaning of the text. What is prohibited by Article 12, paragraph 1, is the General Assembly making recommendations with regard to any dispute or situation while the Security Council is exercising its functions with respect to that dispute or situation, absent a Council request to the Assembly that it do so. The text does not bar debate or discussion in the General Assembly of any such dispute or situation. Thus, there is clearly no legal bar to the discussion of the matter at issue, including the hearing of petitioners thereon. That is not to say, however, that the Committee could not decide, as matter of policy, not to discuss a matter or to impose limitations on the subject-matters to be discussed; those are policy matters for the Member States to consider and decide.

4. The purpose of Article 12, paragraph 1, is to safeguard the Security Council's primary responsibility for the maintenance of international peace and security. The restriction imposed by it upon the competence of the General Assembly is, however, narrow. The disputes and situations which come before the Council are often very broad and frequently of many layers and ramifications. From the beginning, it has not been the practice of the Assembly to regard Article 12, paragraph 1, as precluding it

from adopting *any* resolution relating to a dispute or a situation before the Council. There are and have always been a number of matters which are simultaneously before the two organs and on which these two organs adopt decisions and recommendations. Whether it is possible to draw a dividing line, and if so, exactly where the line must be drawn, are matters which must be addressed on a case-by-case basis. Should questions or objections arise in this respect in the General Assembly, it is for the Assembly to decide the issue.

5. One particular purpose of Article 12, paragraph 1, is to avoid conflicting actions between the General Assembly and the Security Council. The article continues to serve this purpose and remains applicable to avoid the situation of the two organs adopting contemporaneous recommendations which are contradictory or at cross-purposes. This aspect is reflected in the statement, found in a 1968 legal opinion on Article 12, that the Assembly in practice has interpreted the words "is exercising" in paragraph 1 of Article 12 as meaning "is exercising *at this moment*".[4]

8 October 1991

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9. QUESTION WHETHER A VOLUNTARY ABSTENTION BY A PERMANENT MEMBER OF THE SECURITY COUNCIL AFFECTS THE VALIDITY OF A DECISION OF THE COUNCIL—ARTICLE 27 OF THE CHARTER OF THE UNITED NATIONS—RELEVANT PRONOUNCEMENT OF THE INTERNATIONAL COURT OF JUSTICE IN ITS ADVISORY OPINION ON THE LEGAL CONSEQUENCES FOR STATES OF THE CONTINUED PRESENCE OF SOUTH AFRICA IN NAMIBIA (SOUTH WEST AFRICA) OF 21 JUNE 1971

Memorandum to the Secretary-General

1. During our meeting on 21 January 1991, you asked me whether a voluntary abstention by a permanent member of the Security Council affects the validity of a decision of the Security Council. As I told you, there is a long-standing practice of the Security Council which interprets the Charter of the United Nations to mean that an abstention by a permanent member does not invalidate decisions which otherwise meet the voting requirements.

2. The voting procedure of the Security Council is stated in Article 27 of the Charter, paragraph 3 of which provides that decisions of the Security Council on non-procedural matters "shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting."

3. It is not at all uncommon for permanent members to abstain from voting rather than cast a negative vote, which would prevent the Council from taking a decision. These cases include the establishment of United Nations peace-keeping forces, such as the United Nations Interim Force in Lebanon (UNIFIL), and, most recently, resolution 678 (1990).

4. This practice of abstention by permanent members has been generally accepted as not affecting the legal validity of Security Council resolutions. There is an extensive literature on this question. In its advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* of 21 June 1971, the International Court of Justice referred *obiter dicta* to the practice of voluntary abstention by a permanent member in the following terms:

> "By abstaining, a member does not signify its objection to the approval of what is being proposed; in order to prevent the adoption of a resolution requiring unanimity of the permanent members, a permanent member has only to cast a negative vote. This procedure followed by the Security Council, which has continued unchanged after the amendment in 1965 of Article 27 of the Charter, has been generally accepted by Members of the United Nations and evidences a general practice of that Organization."[5]

5. In conclusion, I should add that it is a widely held view among writers on the subject that this particular practice constitutes an authentic example of a de facto modification of a constitutive instrument, in this case the Charter of the United Nations, through the manner of its implementation by Member States.

22 January 1991

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10. Legislative framework for the administration and custody of the United Nations Compensation Fund created by Security Council resolution 687 (1991) and established by Council resolution 692 (1991)—Authority and responsibilities of the Secretary-General for the custody of the compensation fund

Memorandum to the Controller

1. This is in response to your request for my views on the administration and custody of the United Nations Compensation Fund. The Compensation Fund and the Compensation Commission have been created by section E, paragraph 18, of Security Council resolution 687 (1991), and established by paragraph 3 of Security Council resolution 692 (1991) in accordance with section I of the report of the Secretary-General (S/22559) pursuant to paragraph 19 of resolution 687 (1991). Both the two resolutions and the Secretary-General's report contain relevant provisions for the administration of the Fund.

2. In paragraph 18 of resolution 687 (1991) the Security Council decided "to create a fund to pay compensation for claims that fall within paragraph 16 above and to establish a commission that will administer the fund". In paragraph 19 of the same resolution, the Council directs the Secretary-General to present to the Council recommendations, *inter alia*, on the administration of the Fund.

3. In paragraph 3 of his report, the Secretary-General made the following recommendation as to the status of the Fund:

> "The Fund . . . will be established by the Secretary-General as a special account of the United Nations . . . The Fund will be operated in accordance with the United Nations Financial Regulations and Rules. As a special account of the United Nations, the Fund therefore, will enjoy . . . the status, facilities, privileges and immunities accorded to the United Nations. The Fund will be used to pay compensation for 'any direct loss, damage . . .' as provided for in paragraph 16 of resolution 687 (1991)."

Several other paragraphs in section I of the Secretary-General's report contain provisions relevant to the status and administration of the Fund:

—paragraph 4 states, *inter alia*, that "the Fund is to be administered by the Commission established by the Security Council in paragraph 18 of resolution 687 (1991)";

—paragraph 6 states that "the Executive Secretary's primary responsibility will be the technical administration of the Fund";

—paragraph 10 includes among the policy-making functions of the Governing Council the establishment of guidelines "on all policy matters, in particular, those relating to the administration and financing of the Fund" and the establishment of the procedures to be applied to the processing and settlement of claims, "as well as to the payments to be made from the Fund";

—paragraph 12, finally, states that "under the direction of the Executive Secretary, the secretariat will carry out such tasks as may be assigned to it by the Governing Council and the commissioners, in particular the technical administration of the Fund . . ."

4. In paragraph 3 of resolution 692 (1991), as mentioned above, the Security Council approved section I of the Secretary-General's report by deciding that the Fund and the Commission would be established in accordance with that section. In paragraph 5 the Council directed the Governing Council to implement section E of resolution 687 (1991), taking into account the recommendations in section II of the Secretary-General's report.

5. The legislative framework which emerges from the above-mentioned provisions is to be summarized as follows: the Compensation Fund is a special account of the United Nations, established by the Secretary-General and subject to the United Nations Financial Regulations and Rules. The resolutions and the report of the Secretary-General thus assume that the Secretary-General maintains his authority and responsibilities thereunder. The Governing Council, as the policy-making organ of the Commission, has the authority to establish guidelines, *inter alia*, on the administration and financing of the Fund, and to establish procedures for the payment of claims. The Executive Secretary and the secretariat of the Commission, subject to such guidelines and procedures, carry out the technical administration of the Fund. It should also be underlined that

the secretariat of the Commission is part of the Secretariat of the United Nations. This legislative framework is complemented by section II of the Secretary-General's report, which provides some examples of the powers of the Governing Council pertaining to the financing and administration of the Fund. Reference can be made to paragraphs 17 (arrangements for ensuring that payments are made to the Fund) and 28 (payment of claims and allocation of funds).

6. It is necessary at this point to clarify what the responsibilities of the Secretary-General are under the Financial Regulations and Rules in connection with special accounts of the United Nations. In this respect, rule 106.1 provides that "no commitments, obligations or expenditures against any funds may be incurred without the written authorization of the Controller." Regulation 8.1, which concerns the custody of funds, states that "the Secretary-General shall designate the bank or banks in which the funds of the Organization shall be kept"; rules 108.1 to 108.12 provide the specifics for the implementation by the Secretary-General of regulation 8.1 and deal, *inter alia*, with bank accounts (rule 108.1) and approval of obligations and payments (rule 108.9). Regulations 9.1 and 9.2 deal with the investment of funds and provide for the authority of the Secretary-General to make short-term as well as long-term investments of moneys standing to the credit of funds and accounts. Once again, rules 109.1 to 109.5 set out procedures for the implementation of those regulations.

7. It is clear from the foregoing that a distinction must be made between the responsibilities of the Compensation Commission under the relevant Security Council resolutions, and of the Secretary-General, as chief administrative officer of the Organization, under the Financial Regulations and Rules. Flowing from this, a distinction should be made, especially having in mind the financial practices of the United Nations, between, on the one hand, financing and administration and, on the other hand, custody of the assets of the Fund. The custody of the Fund covers the designation of the banks where the fund will be held, the receipt of the moneys, the investment of the assets and the necessary internal arrangements. The financing of the Fund relates to the establishment of mechanisms for determining the appropriate level of Iraq's contribution to the Fund, as well as the arrangements for ensuring that payments are made to the Fund. The administration of the Fund rather concerns the utilization of the assets of the Fund in accordance with its purpose, i.e., the disbursement and allocation of those assets. The above-mentioned provisions of resolution 687 (1991) and the Secretary-General's report, in the light of the purpose of the whole section E of that resolution (to compensate the victims of Iraq's invasion of Kuwait), and in conjunction with the Financial Regulations and Rules, shows that the authority of the Commission mainly concerns the financing of the Fund and the disbursement and allocation of the resources of the Fund.

8. The first conclusion which is therefore to be drawn is that the legislative framework highlighted above does not intend to derogate from the authority and responsibilities of the Secretary-General for the custody of the Compensation Fund. This conclusion follows from the interpretation of the above-mentioned legal instruments and is strengthened by the

consideration that, since the Secretary-General has under the Financial Regulations and Rules general fiduciary responsibility for United Nations funds, every exception thereto should be construed in a restrictive way.

9. As far as the disbursements from the Fund are concerned, two different kinds of expenses are in the forefront, namely, payment of claims on the one hand and operational expenses of the Commission on the other hand (e.g., payment of Secretariat staff, payment of Commissioners, purchase of equipment).

10. As regards the payment of claims, the Governing Council is the competent organ to establish criteria and guidelines for the allocation of funds among the various claimants; to establish procedures for the payment of claims; and to make a final determination on whether individual claims would be compensated and on the amounts to be awarded (paragraphs 19 of resolution 687 (1991) and 27 and 28 of the Secretary-General's report). The secretariat of the Commission acts in accordance with these criteria and procedures in carrying out the necessary technical tasks. The determination by the Governing Council of the amount to award to a claimant constitutes sufficient authority to cause the obligation of the corresponding amount from the Fund. The bureaucratic task of doing the paperwork necessary to actually disburse the moneys is part of any financial operation, does not entail a discretionary power of the Secretary-General which might affect the authority of the Compensation Commission, and could be carried out either by the Controller (on behalf of the Secretary-General) or by the Executive Secretary. This aspect could be easily agreed upon between the Secretary-General and the Executive Secretary.

11. The Governing Council has also the possibility to influence the operational expenses of the Commission, for example by requesting the Executive Secretary to appoint a certain number of Commissioners for specific tasks. However, what matters in this connection is rather the status of the Executive Secretary as staff member of the United Nations, appointed by the Secretary-General and subject to the Staff Regulations and Rules. The Executive Secretary must therefore abide by the Financial Regulations and Rules in the expenditure of money from the Fund, in particular rule 106.1, quoted above. If there is a concern that the normal procedures could cause unnecessary delays, the Secretary-General would expressly delegate to the Executive Secretary the authority for incurring expenditures; another similar arrangement would consist in the appointment by the Controller of certifying and approving officers, in accordance with financial rule 108.9, to take care exclusively of the expenditures mentioned in this paragraph. These officers could be located at the headquarters of the Commission. The Secretary-General could give assurances to the Governing Council that he would be prepared to establish an administrative/managerial mechanism that would ensure that the work of the Commission was not impeded by bureaucratic delays.

17 October 1991

11. Status of the Special Commission established by the Secretary-General pursuant to paragraph 9 (*b*) (i) of Security Council resolution 687 (1991)

Memorandum to the Under-Secretary-General for Disarmament Affairs

1. During a recent meeting of the Secretariat Task Force on the implementation of Security Council resolution 687 (1991), my views were requested on the question of the status of the Special Commission established by the Secretary-General pursuant to paragraph 9 (*b*) (i) of Security Council 687 (1991).

2. By paragraph 9 (*b*) (i) of its resolution 687 (1991), the Security Council decided that "the Secretary-General . . . shall develop and submit to the Council for approval a plan calling for the completion of the following acts within 45 days of such approval: the forming of a Special Commission . . ."

3. In his report to the Security Council, the Secretary-General stated the following: "Subject to the approval of the Security Council, it is my intention to set up the Special Commission . . . and to make all necessary arrangements for it to begin implementation of its tasks . . . I propose that it should have an Executive Chairman with a Deputy Executive Chairman . . . the formal membership of the Special Commission would be of the order of 20 to 25 persons."[6]

4. By a letter dated 19 April 1991, the President of the Security Council informed the Secretary-General that the above-mentioned report had been brought to the attention of Council members, who "agreed to the proposals" contained therein.[7]

5. While the Secretary-General, not the Security Council, actually appointed the members of the Special Commission, he did so following Security Council approval of the proposals he had submitted pursuant to Council resolution 687 (1991). The Commission's title properly reflects its link to the Council: "Special Commission established by the Secretary-General pursuant to paragraph 9 (*b*) (i) of Security Council resolution 687 (1991)". The Special Commission owes its origin to, and received its mandate from, the Security Council.

6. In the *Repertory of Practice of United Nations Organs* prepared by the Secretary-General, the section devoted to subsidiary organs of the Security Council (Article 29) includes "subsidiary organs set up by the Secretary-General pursuant to Council resolutions" in its list of Council subsidiary organs and in the summary of practice on the establishment of such organs.[8] While a caveat is added that "no implication is intended as to whether those bodies are or are not subsidiary organs within the meaning of Article 29", none the less, in the *Repertory*, the Secretary-General treats these bodies as if they were subsidiary bodies of the Security Council.

7. In view of the above, the Special Commission should, for all intents and purposes, be treated as if it were a subsidiary organ of the Security Council.

20 May 1991

12. UNITED NATIONS PRACTICE WITH RESPECT TO REQUESTS FOR DELETION OF STATEMENTS FROM OFFICIAL RECORDS

Cable to the Chief of Protocol, Office of the Director-General, United Nations Office at Geneva

This is with reference to the penultimate paragraph of the note verbale of 25 February 1991 from the Permanent Mission of (name of a Member State), attached to your cable which reads as follows: "The Permanent Mission of (name of the Member State) therefore requests that the above-mentioned statement be struck from the records of the Commission on Human Rights". Please note that it is not the practice of the United Nations to expunge from official records statements duly entered into such records.[9] If the statement made by the member of the delegation of the State concerned in the Commission on Human Rights was properly made pursuant to the rules of procedure of the Commission, the mission in question should be advised that its request for deletion of the statement from the records of the Commission cannot, in accordance with established United Nations practice, be acceded to. The Mission can, if it so wishes, place on record its views concerning the statement in question. The two statements will form part of the legislative history of the proceedings of the Commission during its forty-seventh session.

26 February 1991

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13. LEGAL CAPACITY OF INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS TO ESTABLISH OTHER INTERNATIONAL ORGANIZATIONS—LEGAL CAPACITY OF THE UNITED NATIONS DEVELOPMENT PROGRAMME TO PARTICIPATE IN THE ESTABLISHMENT OF OTHER INTERNATIONAL ORGANIZATIONS OR TO ESTABLISH ITS OWN SUBSIDIARY ORGANS

Memorandum to the Officer-in-Charge, Regional Bureau for Arab States and Europe, United Nations Development Programme

I. *Introduction*

1. This is in reference to your memorandum of 17 July 1991, to which you attached a copy, for our review, of an already signed agreement between UNDP and the Government of (name of a Member State) for the establishment of the Centre for Environment and Development Programme for the Arab Region and Europe (CEDARE) (hereinafter the "Centre").

2. The proposed Centre is to be an "international organization" jointly established by UNDP and the Government in question, whose headquarters are to be located on the territory of the country concerned, with subsidiary or operational units in the Arab region and Europe. It is, under article III of the Agreement, to be established as "an autonomous, non-profit international institute governed by a Board of Trustees in

accordance with the provisions of its own Charter". The Centre is to be endowed with an independent legal personality and with the powers necessary to carry out its objectives, including, in particular, the power "to enter into contracts or agreements with Governments, international, public or private organizations and agencies . . ." (article VI (5)). The Centre, its international staff and representatives of member States participating in its activities are entitled to the privileges and immunities stipulated in article VIII of the Agreement.

3. This Agreement raises some fundamental questions pertaining to the legal capacity of international intergovernmental organizations, in general, and of the UNDP, in particular, to create other international organizations endowed with an independent legal personality, and to establish their own subsidiary organs. These issues are set out below at some length for future reference.

II. *Legal capacity of international intergovernmental organizations to establish other international organizations or their own subsidiary organs*

4. The capacity to establish international intergovernmental organizations having separate legal personality is, under international law, conferred upon States through the conclusion of agreements.[10] International intergovernmental organizations which are the creation of States cannot in and of themselves create new international organizations, endowed with the same international legal personality, unless they are specifically mandated to do so by States.

5. The power of international intergovernmental organizations to establish their own subsidiary organs depends on their mandate. In the case of the United Nations the legal capacity to establish subsidiary organs is conferred upon three of the principal organs of the United Nations: the General Assembly, the Security Council and the Economic and Social Council, under Articles 22, 29 and 68 of the Charter of the United Nations, respectively.

III. *Legal capacity of the United Nations Development Programme to participate in the establishment of other international organizations, or to establish its own subsidiary organs*

6. The United Nations Development Programme was created by the General Assembly in its resolution 2029 (XX) of 22 November 1965, as a combined organ of the Expanded Programme of Technical Assistance and the Special Fund, to be administered under the authority of the Economic and Social Council and the General Assembly. It is a subsidiary organ of the United Nations, and as such it has only those powers which are vested in it in its founding resolution, and in General Assembly resolution 2688 (XXV) of 11 December 1970 ("the Consensus Resolution").

7. Under its mandate, as defined in the above-mentioned resolutions, UNDP has been authorized to conclude with Governments agreements for the establishment of its offices in the host country for the implementation of projects and, in general, for the conduct of UNDP technical cooperation for development activities on a country, inter-country,

subregional, regional, interregional and global level. For these purposes, UNDP can cooperate with the host country or with a group of countries in establishing national or regional structures, and it can, under a proper legislative authority, establish its own subsidiary organs, to carry out development activities.

A. NATIONAL STRUCTURES

8. UNDP can, by an agreement with a State, extend its technical or financial assistance to a national institution, established and governed by the national laws of that State. Notwithstanding the conclusion of an international agreement and the obligations undertaken by the parties on the international level, the legal status of the institution would be that of a national or private corporation established under the laws of the host country.

9. The question of whether a private non-profit corporation, established under the laws of a given State, could be attributed an international legal status by an agreement between UNDP and the State or other international organizations, has arisen in relation to the International Centre for Living Aquatic Resources Management (ICLARM), situated in the Philippines. When requested to give its advice, this Office responded that international organizations do not have the legal capacity to establish new international organizations with an independent international legal personality, and that the only means by which ICLARM could become an international institute would be by an agreement between States on the territories of which the Institute was to conduct its activities. It was therefore advised that UNDP would not join with other international organizations, or with the Government of the Philippines alone, in order to give a national institute an international status.

10. UNDP, could, however, on the basis of an international agreement, extend its assistance to a national institute, established and governed by the laws of the State in the territory in which it is situated. The International Institute on Aging in Malta is an example of such a national institute, established under the national laws of Malta in cooperation with the United Nations. In this case, the Agreement between the United Nations and the Government of Malta regarding the Establishment in Malta of the International Institute on Aging, was concluded pursuant to General Assembly resolution 37/51 of 3 December 1982, in which the Assembly endorsed the International Plan of Action on Aging adopted by the World Assembly on Aging. The said International Plan of Action provided that: "Practical training centres should be promoted and encouraged ... [T]hese centres would also provide updating and refresher courses and ... *they would be linked with appropriate United Nations agencies and facilities*" (emphasis added). As for the means of cooperation between the Institute and other United Nations organizations, article VII of the Agreement provides that:

> "(i) The Institute shall develop arrangements for active and close cooperation with the specialized agencies and other organizations, programmes and institutions of the United Nations ..."

B. REGIONAL STRUCTURES

11. UNDP can likewise participate, as a funding agency and through cooperative arrangements, in the establishment of a regional institute created pursuant to an international agreement, signed by several States, all or most of which belong to the same region. A notable example is the Civil Aviation Training Centre at Mvengué, Gabon, which was established pursuant to a decision of the Ministerial Conference of African States held at Libreville, Gabon, from 24 to 26 October 1978. The States participating at the Conference concluded the Convention on the Establishment of the Multinational Civil Aviation Training Centre of Mvengué (Libreville Convention), whereby they committed themselves to participate in the operation of the Centre and to contribute to its costs. The Convention provided that the Centre shall be situated in Gabon, and that the host country would undertake to provide for land, buildings and related facilities. The signatory States were: Cameroon, Comoros, Ivory Coast, Central African Republic, Gabon, Guinea, Mali, Mauritania, Rwanda, Sao Tome and Principe, Senegal, Chad, Tonga and Zaire.

12. Having established the Centre, UNDP and ICAO entered into cooperation arrangements with the Governments of the signatories to the Convention with a view to financing part of the operational costs of the Centre. The cooperative arrangements were incorporated in a Project Document, signed on behalf of the States signatories to the Libreville Convention, ICAO and the UNDP.

C. SUBSIDIARY ORGANS

13. The power to establish United Nations subsidiary organs, which under the Charter of the United Nations is conferred upon three of the principal organs of the United Nations, is clearly not conferred upon UNDP, which is itself a subsidiary organ of the United Nations. However, UNDP may be empowered in a specific case, and under an appropriate legislative authority of the General Assembly, or of its Governing Council, to establish its own subsidiary organs.

14. One such example is the African Institute for Economic Development and Planning, which was established as a subsidiary organ of the United Nations Economic Commission for Africa under resolution 58 (VI), adopted at the fourth session of ECA. Following the establishment of the Institute, an agreement was concluded between the Economic Commission for Africa and the Government of Senegal in order to ensure that the obligations of the Government, concerning the establishment and the operation of the Institute on Senegalese territory, were fully met.

IV. *The ICARDA precedent*

15. In your memorandum under reference, you mentioned that the present Agreement was taken almost verbatim from the Agreement creating the International Centre for Agricultural Research in the Dry Areas (ICARDA), in Alleppo, Syrian Arab Republic. Although the texts of these agreements are similar, the legal capacity of the parties signatories to each of these agreements is fundamentally different.

16. The Agreement for the Establishment of ICARDA in the Syrian Arab Republic was concluded between the Syrian Government and the International Development Research Centre acting as the Executing Agency for the Consultative Group on International Agricultural Research (CGIAR). CGIAR is an association of some 20 States, 6 intergovernmental organizations (African Development Bank, Asian Development Bank, Inter-American Development Bank, FAO, UNDP and IBRD) and 4 private institutions. The parties to the ICARDA Agreement, unlike the parties to the Agreement under consideration, are therefore primarily States whose capacity to establish international organizations having separate legal personality is not disputed. For this reason, the Agreement establishing ICARDA cannot serve as a precedent for the present Agreement for the establishment of an international organization by the UNDP and the Government in question.

V. *Conclusion and recommendation*

17. From the foregoing it can be concluded that UNDP does not possess the legal capacity to establish a new international organization alone or with only one other State; nor does it have the capacity to establish a United Nations subsidiary organ absent a legislative authority of the General Assembly or of the UNDP Governing Council. The Agreement for the Establishment of ICARDA in the Syrian Arab Republic cannot be taken as a precedent since the signatories to that Agreement were the Syrian Government and the International Development Research Centre, in its capacity as an Executing Agency acting on behalf of the Consultative Group, which is an association of some 20 States and several organizations.

18. Given the importance of the proposed Centre for Environment and Development for the Arab Region and Europe and its contribution to sustainable development in the countries of the Arab region in the fields of freshwater resources, land resources, marine resources, and urbanization and human settlement, we suggest the following alternative modalities for the establishment of the Centre:

(*a*) The Centre could be established as a regional institution by an agreement between the State in question and other countries in the region. UNDP may extend its financial or technical assistance to the Centre under agreed cooperative arrangements, which can either be included in the founding agreement, or be established in a separate agreement between UNDP and the signatory States, as was done in the case of the Mvengué Centre. Under either option, the role of UNDP as it is presently envisaged under article XIII of the Agreement should be redefined;

(*b*) The Centre could also be established under a national legislation as a national entity governed by the law of the State in question. Pursuant to such legislation, UNDP and the host country may conclude an agreement stipulating the legal status of the Centre, its objectives, functions, powers, the privileges and immunities accorded to it by the host country and the nature of the assistance provided to it by UNDP. Under this option, the present articles on the legal status of the Centre and the role of UNDP should be redrafted to conform to the national character of the Centre.

(*c*) UNDP, or for that matter any interested State of the region, may seek legislative authority from the UNDP Governing Council for the creation of the Centre as a subsidiary organ of UNDP. We understand, however, that this course of action is not at present envisaged.

1 November 1991

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14. QUESTION WHETHER, FOR THE PURPOSE OF ARRIVING AT A QUORUM FOR MEETINGS OF THE CARIBBEAN DEVELOPMENT AND COOPERATION COMMITTEE, ASSOCIATE MEMBERS OF THE COMMITTEE MAY BE COUNTED—QUESTION WHETHER AN ASSOCIATE MEMBER'S REPRESENTATIVE CAN HOLD OFFICE IN ANY SUBORDINATE BODY OF THE ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN

Memorandum to the Executive Secretary, Economic Commission for Latin America and the Caribbean

1. This is in reply to your facsimile message dated 1 October 1991 by which you brought to our attention certain passages appearing in the report of the last meeting of the Caribbean Development and Cooperation Committee. Those passages relate to the issue whether associate members of the Committee may be counted for the purpose of arriving at a quorum for meetings. The meeting requested its secretariat to consult with this Office on the matter.

2. Rule 14 of the functions and rules of procedure of the Committee provides as follows:

> "Two thirds of the members of the Committee shall constitute a quorum for any meeting. Each member shall have one vote. Procedural matters may be decided by simple majority. Substantive matters shall be decided by a two-thirds majority of members present and voting. Abstentions from voting shall not affect such majority. Should doubts arise whether a matter is substantive or procedural, the Chairman shall decide after consulting the Vice-Chairmen."

3. It is clear from the above text that the phrase "members" in that rule refers to full members of the Committee, since associate members are not entitled to vote. Thus as the rule stands now, a quorum is achieved when two thirds of the full members are present, without counting associate members.

4. Whether or not an associate member's representative can hold office is another matter not related to the quorum requirement. That matter is not addressed in the rules of the Committee, but it is addressed in the terms of reference of the Economic Commission for Latin America and the Caribbean. Rule 3 (*c*) of those terms provides in the relevant part that "representatives of associate members ... shall be eligible to hold office" in such body (any committee or other subordinate body which may be set up by the Commission).

5. The right to hold office does not in itself lead to the creation of other rights in favour of representatives of associate members, absent a decision by the appropriate intergovernmental body.

6. If the Committee believes the present quorum requirement should be changed, there is always the possibility of amending or suspending its rules pursuant to rule 20. You may note that it has been the recent practice of the General Assembly to waive its quorum requirement for declaring a meeting open and permitting the debate to proceed, on the understanding that this did not imply any permanent change in the provisions of the relevant rules (see A/46/250, para. 9). It must be stressed that the Assembly did not change or waive in any way the quorum requirement for the taking of decisions.

28 October 1991

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15. APPLICATION OF THE REPUBLIC OF THE MARSHALL ISLANDS FOR FULL MEMBERSHIP IN THE ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC—STATUS OF THE REPUBLIC OF THE MARSHALL ISLANDS IN THE LIGHT OF SECURITY COUNCIL RESOLUTION 683 (1990)

Cable to the Executive Secretary, Economic and Social Commission for Asia and the Pacific

This is in reply to your facsimile message to me of 28 March 1991 regarding a communication from the Minister of Foreign Affairs of the Republic of the Marshall Islands conveying his Government's decision to become a full member of the Economic and Social Commission for Asia and the Pacific. Our comments on the various issues raised in your message are as follows:

(*a*) By its resolution 683 (1990) of 22 December 1990, the Security Council determined, "in the light of the entry into force of the new status agreements for the Federated States of Micronesia, the Marshall Islands and the Northern Mariana Islands, that the objectives of the Trusteeship Agreement [for the former Japanese-mandated islands, since known as the Trust Territory of the Pacific Islands] have been fully attained, and that applicability of the Trusteeship Agreement has terminated, with respect to those entities";

(*b*) The Republic of the Marshall Islands is a full State member of a United Nations specialized agency (ICAO) and we understand is responsible for the conduct of its own international relations. Thus, a request from the Republic of the Marshall Islands for admission as a full member of ESCAP is receivable;[11]

(*c*) Should the Economic and Social Council wish to admit the Marshall Islands to membership in ESCAP, it would require amending ESCAP's terms of reference as follows: (1) in paragraph 2, which sets out

the geographic scope of ESCAP, "the Republic of the Marshall Islands" would be added; (2) in paragraph 3, which lists the names of the full members of ESCAP, "the Republic of the Marshall Islands" would be added; (3) in paragraph 4, which lists the names of the associate members of ESCAP, "the Republic of the Marshall Islands" would be deleted;

(*d*) The procedure we recommended in 1985 with regard to the application of Tuvalu, recently reconfirmed with regard to the application of Kiribati, would still apply;

(*e*) As to the question of the appropriate timing to take up the matter, that is for the members of ESCAP to consider. It may be noted that rule 8 of the rules of procedure of the functional commissions of the Economic and Social Council provides that the Commission may amend its agenda at any time. Thus, the Commission is not barred from adding a new agenda item on this question. Whether or not this would be advisable at this stage of the Commission's proceedings is a matter of judgement for the members of the Commission;

(*f*) However, I would draw your attention to a number of factors: (1) the Federated States of Micronesia is legally in the same position as the Republic of the Marshall Islands and may, at some point, also wish to convert its ESCAP associate membership into full membership;[12] (2) the Commonwealth of the Northern Mariana Islands is *not* in the same position as the Republic of the Marshall Islands, as the conduct of its international relations continues to be the responsibility of the United States. Thus, it should retain its present status as associate member. However, pursuant to Security Council resolution 683 (1990), the Trusteeship Agreement is no longer applicable to it and the reference in the geographic scope of ESCAP to "the Trust Territory of the Pacific Islands" no longer covers the Commonwealth of the Northern Mariana Islands. Thus, paragraph 2 of the terms of reference should be amended by the Economic and Social Council to specifically include that Commonwealth in ESCAP's geographic scope; (3) the reference in paragraph 2 of the terms of reference to "the Trust Territory of the Pacific Islands" should remain unchanged, as the Trusteeship Agreement remains in full force for one ESCAP associate member: the Republic of Palau.

1 April 1991

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16. Procedures for obtaining authorization to request advisory opinions from the International Court of Justice

Letter to the Executive Director, United Nations Environment Programme

Reference is made to your letter dated 21 March 1991 requesting information about the procedures for obtaining authorization for UNEP to request advisory opinions from the International Court of Justice.

Article 96, paragraph 1, of the Charter of the United Nations provides that the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question. Paragraph 2 of this article further provides that "other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities".

Pursuant to paragraph 2 of Article 96, two principal organs (the Trusteeship Council and the Economic and Social Council), two subsidiary organs (the Interim Committee of the General Assembly and the Committee on Applications for Review of Administrative Tribunal Judgements) and 16 specialized agencies of the United Nations have been authorized to request advisory opinions.[13] In all these cases, the authorization was given by the General Assembly in the form of a resolution.

As you know, UNEP was established by the General Assembly as a subsidiary organ of the United Nations within the meaning of Article 7, paragraph 2, of the Charter, and not as a specialized agency as defined in Article 57 of the Charter. From the legal standpoint UNEP, as a subsidiary organ, falls within the scope of Article 96, paragraph 2, and may thus request the General Assembly to grant it the authority to request advisory opinions. However, you may wish to note that divergent views were expressed when the requests of the Interim Committee and of the Committee on Applications for Review were considered by the General Assembly.[14] States took different positions on whether a "subsidiary organ" could or should be authorized to request advisory opinions. In the final analysis, the Assembly gave its consent in these two cases in view of the special status of the organs concerned. Since 1955, no subsidiary organ has been added to the list. In 1988, a legal question arose in the Subcommission on Prevention of Discrimination and Protection of Minorities (a subsidiary organ of the Commission on Human Rights, itself a subsidiary organ of the Economic and Social Council) with respect to the privileges and immunities of one of the Subcommission's Special Rapporteurs. It was decided that the request for an advisory opinion should be made by the Economic and Social Council. No suggestion was made at that time that either the Subcommittee or the Commission on Human Rights should be separately authorized to do so.

17 April 1991

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17. PROCEDURE TO BE FOLLOWED IN ORDER TO CLAIM DISABILITY COMPENSATION FOR INJURIES ATTRIBUTABLE TO SERVICE WITH THE UNITED NATIONS PEACE-KEEPING FORCE IN CYPRUS

Letter to a private solicitor

This is in response to your letter of 24 June 1991 in which you inquire about the procedure to be followed in order to claim disability compensation on behalf of your client for injuries allegedly sustained "as a result of

exposure to noxious dust and fumes during two terms of six months in 1967 and 1971/72" while serving with his country contingent of the United Nations Peace-keeping Force in Cyprus (UNFICYP). You state that the "camp in which your client and others were placed was beside a copper mine" and that "[i]t has recently come to light that as a result of the exposure, [y]our client has suffered severe cronic broncial [sic] problems in respect of which he has had and continues to undergo constant treatment and surgury [sic]".

In this regard, I wish to inform you that in accordance with established arrangements between the United Nations and Member States contributing military personnel for United Nations peace-keeping operations, claims arising from death, injury or illness incurred by individual members of national military contingents while performing official duties with a peace-keeping force are to be settled, in the first instance, by the respective national authorities of the State concerned on the basis of its national legislation. This principle is explicitly embodied in the Regulations for the United Nations Peace-keeping Force in Cyprus, which were issued by the Secretary-General on 25 April 1964. Article 39 of the Regulations, which follows, specifically places a responsibility on the respective troop-contributing State to make such compensatory awards:

> "*Service-incurred death, injury or illness.* In the event of death, injury or illness of a member of the Force attributable to service with the Force, the respective State from whose military services the member has come will be responsible for such benefits or compensation awards as may be payable under the laws and regulations applicable to service in the armed forces of that State . . .".

In such cases, the United Nations reimburses the troop-contributing State for compensation paid on behalf of one of its contingent members provided that the State's claim for reimbursement has been duly certified by its Auditor General (or an official of similar rank) as based on payment properly made pursuant to specific provisions of national legislation applicable to service in the armed forces of that State.

I would therefore advise that you pursue any claim for compensation on behalf of your client directly with the competent authorities of the State concerned.

15 July 1991

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18. Status of members of the United Nations Volunteers—Question whether they are considered as "officials" or as "experts on mission" for the purposes of the privileges and immunities of the United Nations

Letter to the Revenue Service in a Member State

1. This is in response to your letter of 29 November 1990, requesting our advice as to the status of members of the United Nations Volunteers,

in particular, whether they are considered as "officials" or as "experts on mission" for the purposes of the privileges and immunities of the United Nations.

A. STATUS OF THE UNITED NATIONS VOLUNTEERS

2. The United Nations Volunteers programme was established by the General Assembly in its resolution 2659 (XXV) of 7 December 1970 as an additional source for providing technical assistance to developing countries in the form of middle-level expertise under volunteer conditions of service. A service agreement is concluded between the United Nations and each individual volunteer and the "Rules of Conduct and Conditions of Service for United Nations Volunteers" are made a part of this service agreement.

3. Although the volunteers are not, strictly speaking, staff members, they are assigned by the United Nations to assist in the carrying out of United Nations–assisted projects or programmes in developing countries. The volunteers are engaged on substantially similar terms and serve under the same conditions as United Nations technical assistance experts, except that they do not receive a salary, but only living expenses and certain related benefits. Like technical assistance experts, volunteers subscribe, upon accepting appointment, to the same oath required of staff members by the Staff Regulations; are subject to the authority of the Organization; are responsible to it in the exercise of their functions; and are required to refrain from accepting any instruction deriving from sources external to the United Nations (see section I of the Rules of Conduct).

B. SERVICE AGREEMENT: PRIVILEGES AND IMMUNITIES

4. Paragraph 17 of the Rules of Conduct and Conditions of Service for United Nations Volunteers,[15] which is attached to the service agreement, states as follows:

> "*Privileges and immunities*: The United Nations Volunteers undertake to negotiate with the host Government the provision of such limited privileges and immunities as are necessary for the proper performance of its functions."

C. STANDARD BASIC ASSISTANCE AGREEMENT: PRIVILEGES AND IMMUNITIES

5. Under the Standard Basic Assistance Agreement usually concluded between UNDP and a Government receiving UNDP assistance (which includes the services of United Nations Volunteers), the Government agrees to grant these persons the same privileges and immunities as are accorded to officials of the United Nations. Paragraph 4 (*a*) of article IX of the Standard Basic Assistance Agreement provides as follows:

> "Except as the parties may otherwise agree in Project Documents relating to specific projects, the Government shall grant all persons,[16] other than Government nationals employed locally, performing services on behalf of the UNDP, . . . the same privileges and immunities as officials of the United Nations, . . . under section 18 . . .

of the Convention on the Privileges and Immunities of the United Nations . . .".[17]

6. Therefore, in the country of service, the individual volunteer enjoys the same privileges and immunities as those enjoyed by a United Nations official.

D. CONCLUSIONS

7. As you may note from the above, United Nations Volunteers have substantially the same terms of service as technical assistance experts who are regarded as officials of the United Nations (see para. 3 above, and the circular dated 9 May 1951 sent by the Secretary-General to all interested Governments), and they are in the country of service regarded as "officials" and granted the same kind of privileges and immunities as are granted to "officials" by virtue of the Basic Assistance Agreement signed by the country of service (see para. 5 above). None the less, it is a fact that United Nations Volunteers are not covered by the Convention on the Privileges and Immunities of the United Nations. We would, of course, hope that, in view of their close assimilation to technical assistance experts and the nature of their employment (including their limited allowances), it would be possible to regard such allowances as tax-exempt.

10 July 1991

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19. Question of the liability of the United Nations Development Programme for loss or damage resulting from gratuitous services extended to its staff in the field, for their convenience

Memorandum to the Director, Division for Administrative and Management Services, United Nations Development Programme

I. *Introduction*

1. This is further to our memorandum of 30 January 1990 and the memorandum of 19 May 1990 addressed to us by the Secretary, Headquarters Property Survey Board, enclosing additional documentation on a United Nations volunteer's claim against UNDP in connection with a vehicle accident in Jamaica. We understand that UNDP is interested in receiving a legal opinion from this Office on this particular case, and on the general issue of UNDP's liability for loss or damage resulting from gratuitous services extended to its staff in the field, for their convenience.

2. We have reviewed the additional documentation communicated to us and provide below a summary of the facts and our opinion.

II. *The United Nations volunteer's case*

3. The facts of the case as they appear from the documentation submitted to us are as follows: on 27 February 1989, a Volvo motor car

owned by the United Nations volunteer stationed in Montego Bay, Jamaica, arrived on the island. After being cleared from the wharf by the UNDP driver, the car was brought to UNDP premises in Kingston, from where it was later taken for servicing. On 21 March 1989, in response to the volunteer's inquiry, the UNDP Senior Administrative Assistant informed him that the car would be passed and licensed the following day, and that he should make the necessary arrangements to come and collect the car. On 22 March, the driver, while driving the car to the Examination Depot, was involved in a road accident.

4. The particulars of the car accident are detailed in the Motor Accident Report form provided by the insurance company and signed by the driver, an abstract of which is given in the police report dated 10 May 1989. According to the report, the driver was driving along Old Hope Road in Kingston, making a right turn into a service station, after being allowed to do so by a taxi driver coming from the opposite direction—in the inner lane. At the same moment an Isuzu motor vehicle came from the opposite direction, in the outer lane, and collided with the Volvo motor car. There were no personal injuries but both motor vehicles sustained material damage.

5. From the letter of 20 March 1990 addressed to you by the UNDP Resident Representative, it appears that the volunteer in question and the third party had the same insurance company and their respective claims were settled amicably. The volunteer's claim was settled in the amount of J$ 19,311.55 and the third party's claim for the amount of J$ 17,320. According to the same letter, the volunteer's policy had an excess of J$ 15,000. The total damage to the Volvo motor vehicle was thus valued at J$ 34,311.55. The volunteer requested UNDP to reimburse him the amount of J$ 15,000, not covered by his insurance, on the basis that the damage to his car had occurred when driven by a UNDP driver.

III. *The legal issues*

6. The legal issues to be addressed are the following:

(*a*) UNDP's liability; (*b*) determination of fault on the part of the UNDP driver; and (*c*) whether UNDP was in breach of any duty of care to the volunteer in question.

A. UNDP'S LIABILITY

7. In law, an employer is responsible, under the doctrine *respondeat superior*, for the wrongful acts of his employees when they are performed in the course of the employees' employment. Under this doctrine, the employer may be held liable for the negligent acts of his employee, occurring in the course of the servant's employment, proximately resulting in injury or damage to those to whom the employer owes a duty of care.

8. It follows from the above that in order for UNDP to be made liable for the damage caused to the volunteer's car, one would have to establish, first, that the UNDP driver was acting in the course of his employment when he had the accident; second, that the UNDP driver caused the accident by some fault on his part; and third, that UNDP in

some way owed the volunteer a duty of care. On the facts, it is not disputed that the UNDP driver had been detailed to drive the volunteer's car as part of his official business. The questions that remain are whether he was at fault and whether his fault can be attributable to UNDP.

B. DETERMINATION OF FAULT ON THE PART OF THE UNDP DRIVER

9. In this case, the question of fault for the occurrence of the road accident in Kingston, Jamaica, could only be determined by a Jamaican court of law, in accordance with the applicable local law. However, the rival claims in this case were settled by the insurance company based on the extent of the damage without any admission or adjudication of fault. The UNDP driver was never charged or prosecuted for any traffic offence, and no civil suit was filed against him for negligence. There is, therefore, no determination or assignment of fault. In the absence of a judicial determination of fault on the part of the driver or other clear evidence establishing that the driver was solely responsible for the accident, UNDP, as his employer, is under no obligation to consider the volunteer's claim.

C. UNDP'S DUTY OF CARE

10. Independently of the question of fault on the part of the UNDP driver, UNDP, as an organization, could be held liable under the law of bailment, if it were established that the volunteer's car was damaged while in the custody of UNDP or one of its employees. There is recognized in law a duty on the part of the bailee to exercise reasonable care for the safety of property entrusted to him and to return this property in its original state in accordance with the contract made with the bailor. The law of bailment distinguishes, however, between a bailment for hire, for mutual benefit, and a gratuitous bailment, to each of which it assigns a different degree of care, on the part of the bailee.

11. In the case of the volunteer, UNDP offered to assist him with the formalities of clearing the vehicle through customs and getting it licensed. The vehicle was entrusted to the UNDP driver and was thus in the possession of UNDP at the time of the accident. However, since the services provided by UNDP to the volunteer in connection with the car were for his own personal benefit, for which he was not charged a fee, and UNDP could not be said to derive a direct benefit, the obligation of UNDP in such circumstances is to be assimilated to that of a gratuitous bailee, who owes a lesser degree of care and is liable for gross negligence only.

12. In the present case the duty of care by which UNDP might be bound as a gratuitous bailee of the volunteer's car is to see to it that its driver, instructed to clear the car, service it and arrange for it to be passed and licensed, is a competent driver. From the documentation submitted to us it appears that the UNDP driver was indeed a competent one and consequently UNDP has discharged its obligation of due care, as is appropriate in cases of gratuitous bailment for the sole benefit, or convenience, of the bailor.

IV. *Conclusion*

13. It follows from the above that UNDP is not liable for the damages incurred in the above-mentioned accident for the following reasons: first, there is no judicial determination of fault on the part of the UNDP driver, in the absence of which UNDP cannot be held liable as its employer; and secondly, the duty of care owed by UNDP to the volunteer as a gratuitous bailee of his car is of the lowest degree, since the bailment, or the gratuitous services rendered, were for the sole benefit, or convenience, of the United Nations volunteer. UNDP discharged its obligation of due care by choosing and instructing a competent driver to perform the services.

General comments

14. As a matter of policy, however, and in order to avoid the recurrence of cases where UNDP drivers, while performing services for other staff members, are involved in road accidents entailing damages, you might wish to consider the issuance of proper instructions which would either forbid the provision of such assistance or, alternatively, inform the individual staff member whose personal effects are being cleared by an agent or employee of UNDP that such service is performed at the staff member's own risk, without any responsibility on the part of UNDP.

3 July 1991

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20. INTERNATIONAL CONVENTION AGAINST APARTHEID IN SPORTS—CONSEQUENCES OF THE NON-PAYMENT BY A STATE PARTY TO THE CONVENTION OF ITS ASSESSED CONTRIBUTION UNDER THE CONVENTION—POSSIBLE CONSEQUENCES OF DEVELOPMENTS IN SOUTH AFRICA AS REGARDS THE STATUS OF THE CONVENTION AND RELEVANT RESOLUTIONS OF THE GENERAL ASSEMBLY

Memorandum to the Assistant Secretary-General for the Centre against Apartheid, Department of Political and Security Council Affairs

Reference is made to your memorandum of 17 October 1991 in which you raised several questions concerning the session of the Commission against Apartheid in Sports. Your questions, set out below, are followed by our answers:

(*a*) What is the consequence if a State party to the International Convention against Apartheid in Sports[18] fails to pay its assessed contribution under the Convention? If the Commission meets and there are delinquent States parties, are they obliged to pay later?

Article 11, paragraph 7, of the International Convention against Apartheid in Sports provides as follows: "States parties shall be responsible for the expenses of the members of the Commission while they are in performance of Commission duties." This provision of the Convention creates a legal obligation for the parties to the Convention. The obligation

continues to be valid as long as the Convention is in force, including, particularly, when the States parties have not met their obligations under the Convention.

Article 10, paragraph 4, of the Convention provides that "in cases of flagrant violations of the provisions of the present Convention, States Parties shall take appropriate action as they deem fit . . .".

Regardless of whether actions deemed fit are taken against a State pursuant to article 10, paragraph 4, of the Convention or otherwise, the State's obligation to pay remains and will obviously not be discharged by that State's refusal to pay.

(*b*) What is the status of the Convention in the light of the readmission of South Africa to the International Olympic Committee (IOC) and the possibility of South Africa's admission to international sporting federations and subsequent participation in world tournaments?

The International Convention against Apartheid in Sports in several places makes reference to South Africa and condemns the practice of apartheid in sports obtaining in that country; but the scope of the Convention is not limited to South Africa, as article 1 of the Convention makes plain:

> "(*a*) The expression "apartheid" shall mean a system of institutionalized racial segregation and determination for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons and systematically oppressing them, *such as that pursued by South Africa*, and "apartheid in sports" shall mean the application of the policies and practices of such a system in sports activities, whether organized on a professional or an amateur basis." (emphasis added)

The readmission of South Africa to the IOC and the possibility of its admission to international sporting federations and participation in world tournaments have not changed the status of the Convention as regards its global reach nor even in South Africa, where apartheid has not yet ceased to exist.

(*c*) Since the sports boycott of South Africa was initiated by the General Assembly, is there a need for a specific resolution to end the boycott?

Resolutions of the General Assembly have a recommendatory rather than a mandatory character. The binding obligations assumed by States parties to the International Convention against Apartheid in Sports, although re-echoing General Assembly resolutions, derive their binding character from the Convention and not from the General Assembly resolutions. A General Assembly resolution to end the boycott would, therefore, no more create a legal obligation than did the resolution which called for the boycott in the first place. There is therefore no legal requirement for a specific General Assembly resolution to end the boycott.

(*d*) How could States parties reconcile their obligations under the Convention and their commitment to political decisions taken within re-

gional or other international organizations that may decide to lift the sports boycott of South Africa?

The obligations assumed by the States parties under the International Convention against Apartheid in Sports were not made conditional to decisions to be taken by other bodies. For this reason decisions taken by such other bodies would not in any way modify the legal obligations assumed by States parties under the International Convention.

(*e*) What is the role of the States parties in terminating the activities of the Convention? Does that require an amendment to the Convention?

Two approaches are possible: The States parties to the Convention could allow the activities of the Commission to fall into disuse—simply let the Commission cease to function. Alternatively, the States parties could wind up the Convention or amend it in whatever manner they considered to be desirable.

(*f*) Is it within the mandate of the Commission to oversee the eradication of apartheid in sports in South Africa?

Clearly an objective of the Commission is the eradication of apartheid in sports in South Africa—but, as the Commission has no authority in South Africa, it would be meaningless to require it to oversee the eradication of apartheid in sports in that country.

(*g*) What will be the status of the Convention when a new democratic and non-racial system of government is established in South Africa? Could it be considered that the Convention would have fulfilled its goals?

Article 10, paragraph 5, of the Convention states: "The provision of the present article [to ensure universal compliance with the Olympic principle of non-discrimination and the provisions of the present Convention] relating specifically to South Africa shall cease to apply when the system of apartheid is abolished in that country." This provision makes it clear that the scope of the Convention goes beyond South Africa and that the Convention would continue even after apartheid had been ended in South Africa.

30 October 1991

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21. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN—PROCEDURAL OPTIONS AVAILABLE TO ADDRESS THE ISSUE OF VIOLENCE AGAINST WOMEN—PRACTICE OF THE SECRETARY-GENERAL AS DEPOSITARY CONCERNING AMENDMENTS TO TREATIES—ADVANTAGES OF AN OPTIONAL PROTOCOL—DIFFERENCE BETWEEN AN AMENDMENT TO AND A REVISION OF A TREATY

Memorandum to the Senior Legal Officer, Office of the Director General, United Nations Office at Vienna

I refer to your memorandum of 9 October 1991 concerning procedural options available to the United Nations Ad Hoc Expert Group Meeting on Violence against Women (11-15 November 1991).

I. *Background paper*

1. First of all, the Office of Legal Affairs is requested to review the background paper submitted by the Government of (name of a Member State) in connection with the above-mentioned meeting.

2. The Office has come to the conclusion that, basically for the reasons indicated in the said background paper, the most appropriate international instrument for addressing the issue of violence against women would be an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations on 18 December 1979[19] ("the Convention").

3. Indeed, it is felt that the subject to be addressed, while closely related to the issues covered by the Convention, is of such a nature as to warrant the adoption of a related but separate instrument.

4. The amendment approach would surely encounter procedural obstacles, which might well be daunting.

5. In accordance with the practice of the Secretary-General as depositary, and as stated in the *chapeau* to the amendment section in the background paper, where a convention is amended, ratification of the amendments is required and those States which do not ratify the amendments remain bound by the old instrument. The statement that follows under "Advantages" to the effect that as the amendment would be to a convention, it would be binding on States parties, would be applicable only if—as in the case of the Constitution of the World Health Organization[20]—the Convention contained a specific clause on the automatic binding effect of amendments in force for a State upon becoming a party to the Convention. The research we were able to conduct indicates that it is only in the case of treaties establishing organizations or unions that an amendment would be automatically binding *vis-à-vis* all parties. I wish to refer in this connection to article 73 of the Constitution of the World Health Organization, signed at New York on 22 July 1946, and to article 52 of the Convention on the International Maritime Organization, done at Geneva on 6 March 1948.[21]

6. In fact, an amendment to the Convention would result in two parallel regimes (see article 30, paragraph 4, and article 40 of the 1969 Vienna Convention on the Law of Treaties):[22] on the one hand, the contracting parties having accepted the amendment would be bound by the Convention, as amended, and by the unamended Convention with respect to the contracting parties not having accepted the Convention, as amended; on the other hand, a State having accepted the unamended Convention after the entry into force of an amendment, i.e., without accepting the said amendment, would be considered as a party to the amended Convention (as well as to the unamended Convention in relation to any party to the Convention not bound by the amendment), failing an expression of a different intention by that State, a situation which now obtains in the field of narcotic drugs and psychotropic substances. I wish to refer, in this connection, to article 47 of the Single Convention on

Narcotic Drugs, 1961, done at New York on 30 March 1961,[23] and to article 19 of the Protocol amending the Single Convention on Narcotic Drugs, 1961, concluded at Geneva on 25 March 1972.[24]

7. In addition, it should be understood that the word "immediately" in the second statement under "Advantages" should mean "upon entry into force" inasmuch as the amendment would have no legal effect prior to having entered into force.

8. The possibility of adopting a declaration has been dismissed from the outset since, as a non-legally binding instrument, it is felt that it would not meet the purpose as stated in the memorandum to you dated 8 October 1991.

9. It is further felt that the adoption of an altogether new convention would be equally inappropriate, especially taking into account financial considerations.

10. The advantages of an optional protocol, as correctly stated in the background paper, would be that "States that had signed, but not ratified [the Convention] could join the optional protocol". We would have difficulty envisaging—as indicated in the background paper—a State being precluded from signing at any time the optional protocol even though it had not as yet signed the Convention. On the other hand, it would appear anomalous for a signatory to the Convention to ratify or accede to the optional protocol without first ratifying or acceding to the Convention. This approach is in keeping with the statement under "Disadvantages" to the effect that "States not party to [the Convention] would not be able to join the optional protocol." In other words, a State should become a party to the Convention before becoming a party to the optional protocol or, alternatively, become a party to the Convention and to the optional protocol concomitantly. (We have taken for granted that the optional protocol would be subject to the same participation procedures as the Convention, i.e., signature, ratification and accession.) In this connection, you may wish to refer to the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966,[25] and, in particular, the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty, adopted by the General Assembly on 15 December 1989,[26] which may be used as a precedent for a possible optional protocol to the Convention on violence against women.

II. *Article 26 of the Convention*

11. The Office of Legal Affairs is also requested in the memorandum to give its opinion "on the meaning of article 26" of the Convention, which reads as follows:

> "1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
>
> 2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request."

12. The 1969 Vienna Convention on the Law of Treaties does not address the term "revision" *stricto sensu*. However, the research we were

able to conduct indicates that "revision" in keeping with the practice of the Secretary-General as depositary of multilateral treaties, and in particular of human rights treaties, refers to the examination at a special meeting of all the provisions of a treaty concerned "with a view to ensuring that its object and purpose are being realized". There have not been so far any revision meetings held in respect of the human rights treaties deposited with the Secretary-General. As an example of a provision for the revision of a treaty, I would mention article VIII of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, adopted by the General Assembly of the United Nations on 10 December 1976,[27] and to the *United Nations Disarmament Yearbook*,[28] which relates to the review conference held in 1984 on that Convention.

13. The terms "amendment" or "modification", on the other hand, would appear to be identical in meaning. An amendment usually entails changing one or several specific provisions of a treaty at the request of either a party or a group of parties to the treaty. Such changes, modifications or amendments are governed by the procedure set out in the treaty itself (i.e., request for a proposed amendment, adoption of the proposed amendment, entry into force of the proposed amendment, etc.). In rare cases, a treaty does not provide for an amendment procedure. In such a case, the parties may proceed on the basis of unanimous agreement.

14. Therefore, the basic difference between an amendment to and a revision of a treaty lies in the scope of these two procedures: an amendment consists in changes to one or several specific provisions of a treaty, while a revision generally consists in the examination of the entire text of the treaty or of several provisions thereof.

15. All human rights treaties deposited with the Secretary-General but one contain provisions concerning amendment and/or revision.

31 October 1991

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22. FINANCIAL OBLIGATIONS TO THE FEDERAL REPUBLIC OF GERMANY AS A MEMBER OF THE INTERNATIONAL COCOA ORGANIZATION IN THE LIGHT OF THE ACCESSION OF THE FORMER GERMAN DEMOCRATIC REPUBLIC TO THE FEDERAL REPUBLIC—INTERPRETATION OF THE RELEVANT PROVISIONS OF THE 1983 VIENNA CONVENTION ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS

Letter to the Executive Director, International Cocoa Organization

This is in reply to your letters of 3 April and 18 July 1991 concerning the financial obligations of the Federal Republic of Germany as a member of the International Cocoa Organization in the light of the accession of the former German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990. As you noted, the former German Democratic Republic was also a member of the International Cocoa Organization.

I should like to point out, first, that the reference in your letter of 18 July 1991 to the "former State" of the Federal Republic of Germany is incorrect. The Federal Republic of Germany has not ceased to exist and it continues to possess the same international legal personality as it did prior to 3 October 1990, the date when the accession of the former German Democratic Republic came into effect and the German Democratic Republic ceased to exist.

The United Nations has had occasion in the past to consider the argument that the financial obligations of the former German Democratic Republic, incurred towards an international organization of which it was a member, are not automatically assumed by the Federal Republic of Germany. We have not agreed to that assertion on the following grounds.

We are well aware that the incorporation of one State into a State which maintains its pre-existing international legal personality is different from the case of two States merging to create a new third State with its own distinct international legal personality. That difference does not, however, prevent the existence of a valid succession of States under international law. The manner by which the former German Democratic Republic was incorporated into the Federal Republic of Germany does not, in our view, alter Germany's assumption of rights and obligations as a successor State.

In that connection, it may be recalled that, by a letter to the President of the General Assembly dated 6 November 1990, the Permanent Representative of the Federal Republic of Germany stated with reference to the membership of the former German Democratic Republic in certain subsidiary organs of the General Assembly that "since the former German Democratic Republic, by its accession, has become part of Germany, it is up to the Government of Germany to decide whether it wishes to take its seat in those three bodies ... Germany wishes to occupy the seat in the Special Committee on Peace-keeping Operations."

Accordingly, Germany now occupies the seat of the former German Democratic Republic on the Special Committee on Peace-keeping Operations. We also understand that the title to the permanent mission of the former German Democratic Republic to the United Nations has passed to Germany. Similarly, in our view, the financial obligations of the former German Democratic Republic to the United Nations have passed to Germany.

This result is foreseen in various provisions of the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts.[29] While that Convention is not yet in force, its provisions represent the general *opinio juris* of the international community on the question. "State debt" as used in the Convention means "any financial obligation of a predecessor State arising in conformity with international law towards another State, *an international organization* or any other subject of international law" (article 33, emphasis added).

For the case of a uniting of States, article 39 of the Convention provides as follows:

"When two or more States unite and so form one successor State, the State debt of the predecessor States shall pass to the successor State."

In the case of the dissolution of a State, article 41 of the Convention provides as follows:

"When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States otherwise agree, the State debt of the predecessor State shall pass to the successor States in equitable proportions, taking into account, in particular, the property, rights and interests which pass to the successor States in relation to that State debt."

While positions may vary as to whether or not either of the two above-quoted provisions would apply to the case of the accession by the former German Democratic Republic to the Federal Republic of Germany, the underlying legal philosophy of the provisions is clear: to the extent that property rights and interests of a predecessor State pass to a successor, so too pass the State debts of that predecessor.

In the context of the International Cocoa Organization, therefore, we would be of the view that whatever obligations were owed by the former German Democratic Republic to the Organization on 3 October 1990 are to be assumed by the Federal Republic of Germany.

As the contributions to be assessed Germany for the period following that date, that is a matter to be determined in accordance with the relevant provisions of the International Cocoa Agreement and the decisions and practices of the International Cocoa Council.

9 August 1991

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23. 1958 AGREEMENT CONCERNING THE ADOPTION OF UNIFORM CONDITIONS OF APPROVAL AND RECIPROCAL RECOGNITION OF APPROVAL FOR MOTOR VEHICLE EQUIPMENT AND PARTS—REQUIREMENT OF UNANIMITY FOR THE AMENDMENT OF THE AGREEMENT UNDER THE PROVISION OF ITS ARTICLE 12—POSSIBILITY OF SUBSTITUTING FOR UNANIMITY A WEIGHTED VOTING OR OTHER VOTING SYSTEM

Memorandum to the Director, Transport Division, Economic Commission for Europe, Geneva

This is further to my fax of 21 August 1991 responding to your fax of 19 August 1991, by which you ask our views on alternative voting methods in respect of amendment procedures with respect to the 1958 Agreement concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts.[30]

1. You particularly inquire, with reference to article 12 of the Agreement and the question of the unanimity required for the adoption of an amendment, about the possibility of substituting a weighted voting or other voting system which would "depart from the generally United Nations–accepted one country–one vote system".

2. It would appear that your query raises two distinct questions:

(*a*) Whether amendments must always be accepted unanimously by all parties;

(*b*) Whether it is possible to depart from the "one country–one vote system".

3. As concerns the first question, it is to be recalled that, generally speaking, unanimity is not always required for an amendment. Indeed, within the United Nations framework, Article 108 of the Charter provides that amendments to the Charter are to enter into force for all Members of the United Nations when they have been ratified by two thirds of the Members—including, however, all the permanent members of the Security Council. In this connection, you may be referred to a number of multilateral treaties deposited with the Secretary-General under which procedures other than "the unanimity (express or tacit) procedure" have in fact been adopted.

4. You will note, however, that in such cases the amendments do not always apply to all parties. In a number of instances, the amendments apply only to those parties which have approved the amendments. In other cases, parties may declare that they do not accept the amendment; in turn the relevant body (conference, etc.) may determine that the amendment is of such a nature that, as a consequence of its non-acceptance, the party concerned shall cease within a given period of time to be a party to the treaty (see, for example, the 1949 Convention on Road Traffic[31]).

5. As concerns the second question, it should be pointed out that the "one country–one vote system" does apply, according to the Charter, to decisions taken within the framework of the General Assembly (Article 18).

6. But this voting procedure need not apply to decisions taken under multilateral treaties, even if they have been adopted under United Nations auspices. Such treaties are indeed distinct from the Charter, having a different participation and varying embodiments of commitments agreed to by the parties in a particular domain.

7. Therefore, nothing would preclude the parties from adopting a different system of voting than the "one country–one vote" system, the more so where technical agreements are concerned.

8. As you probably know, practically all commodity agreements usually provide for a weighted-vote system (see, for example, articles 11 and 44 and annexes A and B of the International Sugar Agreement, 1987[32]).

9. We have also reviewed the terms of reference and the rules of procedure of the Economic Commission for Europe, which you mention.

They do not appear to shed any additional light or provide guidance on these matters.

10. However, for a "non-unanimity" procedure, or a weighted-voting system, to be included in a treaty, such procedure or system must be adopted by the parties either at the conclusion stage or, alternatively, in full compliance with the provisions of the treaty, if the treaty has entered into force.

11. Thus, in the case of the 1958 Agreement, the procedure provided for in article 12 for the amendment of the Regulations could only be modified in accordance with the provisions of article 13.

23 August 1991

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24. DECISION OF A COURT OF A MEMBER STATE REFUSING TO GRANT UNICEF IMMUNITY—SUGGESTION THAT UNICEF SHOULD ENGAGE COUNSEL TO PLEAD IMMUNITY ON APPEAL OR IN ANY PROCEDURE TO REVIEW THE DECISION—OBLIGATIONS OF THE MEMBER STATE IN QUESTION UNDER THE AGREEMENT IT CONCLUDED WITH UNICEF AND UNDER THE 1946 CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Memorandum to the Executive Director, United Nations Children's Fund

1. I should like to refer to the memorandum of 14 January 1991 concerning a former UNICEF employee. Attached to the memorandum is a copy of a letter dated 14 January 1991 from a legal officer in the Ministry of External Affairs of (name of a Member State) to the representative of UNICEF in this country concerning the recent decision of the Industrial Court refusing to grant UNICEF immunity in a case brought by the person in question and entering a judgement in that person's favour.

2. We are pleased that the Ministry agrees with our position that UNICEF should neither submit to the jurisdiction of the Court nor contest the merits of the case absent a waiver of immunity.

3. We cannot, however, agree with the procedure suggested by the Ministry that UNICEF engage counsel to plead immunity on appeal or in any procedure to review the decision. We cannot agree either to the suggestion that UNICEF bring to the notice of the Court in question the certificate prepared by the Ministry of External Affairs affirming UNICEF's immunity.

4. In our view, the representative of UNICEF in the country in question should inform the Ministry of External Affairs at the highest possible level that the United Nations Secretariat is confident that the Government intends to honour its commitments to the United Nations and UNICEF contained both in the Agreement it entered into with UNICEF in 1978 and in the 1946 Convention on the Privileges and

Immunities of the United Nations.[33] The attention of the Ministry should be drawn in particular to the following provisions of article II of the 1946 Convention:

> "*Section 2.* The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.
>
> "*Section 3.* The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action."

5. In addition, the Ministry should be requested to take whatever measures are necessary to ensure implementation of the above-mentioned treaty obligations. Any attempt by the officials of the State in question to enforce the decision in question or extend any measures of execution against the United Nations or UNICEF would constitute a breach of those obligations. It is for the Ministry of External Affairs to communicate with other branches of the Government, including the judiciary, with regard to the Government's international legal obligations, not the United Nations.

6. You may also wish to inform the representative of UNICEF that we will also be contacting the Permanent Mission of the State concerned at Headquarters along the same lines.

29 January 1991

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25. STATUS OF A DIPLOMAT WHO WAS ALREADY A PERMANENT RESIDENT IN THE HOST STATE BEFORE BEING APPOINTED TO A PERMANENT MISSION TO THE UNITED NATIONS—ARTICLE 38 OF THE 1961 VIENNA CONVENTION ON DIPLOMATIC RELATIONS—QUESTION WHETHER THE UNITED NATIONS SHOULD REQUIRE CREDENTIALS FOR THE APPOINTMENT OF A CHARGÉ D'AFFAIRES OF A PERMANENT MISSION IN GENEVA—ARTICLE 19, PARAGRAPH 1, OF THE VIENNA CONVENTION

Memorandum to the Senior Legal Officer, Office of the Director-General, United Nations Office at Geneva

1. This is with reference to your cable dated 18 June 1991 concerning the status of the chargé d'affaires a.i. of the Permanent Mission of (name of a Member State) in Geneva.

2. In his letter of 13 June 1991, the Deputy Permanent Observer of Switzerland raised a question concerning the current Swiss policy with respect to diplomats whose residence in Switzerland was already of a permanent nature before being appointed to a permanent mission to the

United Nations. We note that, according to current Swiss practice, a diplomat such as the person in question who is a citizen of another State but holds an ordinary residence permit ("*permis C*") in Geneva does not receive a "*carte de légitimation*" issued by the Swiss Ministry of Foreign Affairs and does not enjoy diplomatic privileges and immunities in Switzerland.

3. The 1961 Vienna Convention on Diplomatic Relations[34] (the "Vienna Convention"), declared applicable by analogy to permanent missions in Geneva by the Swiss Federal Council, specifically addressed the issue of the privileges and immunities of permanent residents of the host State. Article 38 provides as follows:

> "1. Except insofar as additional privileges and immunities may be granted by the receiving State, a *diplomatic agent* who is a national of or *permanently resident* in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.
>
> "2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission." (emphasis added)

The above provisions suggest that administrative, technical and service staff of a mission may be subject to Swiss jurisdiction under certain circumstances. However, a diplomatic agent who is a permanent resident in the receiving State is entitled to be accorded at least inviolability and immunity from jurisdiction during the performance of his official functions. A diplomatic agent in Geneva may not be denied these privileges and immunities because of his status as permanent resident of Switzerland. "Diplomatic agent" is defined in article 1 of the Vienna Convention as the head of the mission or a member of the diplomatic staff of the mission, a category which clearly includes the chargé d'affaires.

4. It should be noted that article 37 of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975[35] contains language identical to that of the 1961 Vienna Convention with respect to the privileges and immunities of diplomats who are permanent residents of the receiving State. The 1975 Vienna Convention, however, has not been ratified by Switzerland.

5. The Interim Arrangement on Privileges and Immunities of the United Nations concluded between the Secretary-General of the United Nations and the Swiss Federal Council on 11 June 1946[36] does not address the particular issue of privileges and immunities of diplomats who are permanent residents in the receiving State. In the absence of specific language on this point, the Vienna Convention is the governing authority.

6. The issuance of a residence permit or "*carte de légitimation*" is a matter of internal Swiss policy to be handled by the Swiss authorities. None the less, the Permanent Mission of Switzerland should be advised that diplomats such as the person concerned are entitled to a scope of privileges and immunities specified in the Vienna Convention and that the current Swiss practice with respect to such diplomats should be brought into consistency accordingly.

7. Your second inquiry in connection with this matter is whether the United Nations should require credentials for the appointment of a chargé d'affaires of a permanent mission in Geneva. Your cable of 20 April 1990 suggests that the United Nations currently does not request credentials in such a case.

8. According to article 19, paragraph 1, of the Vienna Convention, "[t]he name of the chargé d'affaires ad interim shall be *notified*, either by the *head of the mission* or, in case he is unable to do so, by the *Ministry of Foreign Affairs of the sending State* to the Ministry of Foreign Affairs of the receiving State or such other ministry as may be agreed" (emphasis added). In our view, full credentials are not required in a case where the chargé d'affaires has been appointed from among a mission's diplomatic staff. In such a case, the United Nations Office at Geneva could simply be notified by the head of the mission or the appropriate authority of the sending State. Where the newly appointed chargé d'affaires was not previously a member of the mission, formal notification is required.

16 August 1991

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26. Establishment in a Member State of a new tax on goods and services which includes United Nations publications —Question whether the United Nations could request, on the basis of article II, sections 7 and 8, of the 1946 Convention on the Privileges and Immunities of the United Nations, that United Nations publications purchased in that Member State be exempt from the new tax

Memorandum to the Acting Chief, Sales Section, Department of Conference Services

1. Your memorandum of 12 December 1990 concerning a goods-and-services tax in (name of a Member State) has been forwarded to this Office for advice. We understand that, as of 1 January 1991, a new tax will be levied in the country in question on goods and services, including imported goods and services such as United Nations publications. You requested that this Office review the information and advise whether United Nations publications purchased in this country could be exempt from such tax.

2. The new goods and services tax (GST) is described in the Guide enclosed with your memorandum as a tax "calculated at the rate of 7 per cent on sales of goods or the provision of services made and is generally payable by the recipient of the supply at the time the consideration is paid or becomes payable". As a destination-based consumption tax, GST is collected from the final consumer of goods and services subject to such tax. Thus, businesses which are initially charged GST on their supplies are subsequently entitled to a full credit for this tax through the input tax credit. GST is therefore a tax whose burden falls on the consumer of goods and services in the country in question. As such, it might, as far as United Nations publications are concerned, have a restrictive effect on their purchase in the country concerned. However, if we are to request relief from the payment of this tax, it is necessary to establish well-founded legal arguments to support such a request.

3. Since the tax falls on the purchaser of the publications and not on the United Nations itself, no claim for exemption or refund can be made on the basis of article II, sections 7 (*a*) and 8, of the Convention on the Privileges and Immunities of the United Nations.[37] It is true that, under section 7 (*c*) of the Convention, the United Nations is exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications. However, the term "restrictions" in the above-mentioned provision has been interpreted, in the practice of the United Nations, as a form of control by way of government censorship or licensing. It would not be legally correct to consider tax charges levied at a national level as a restriction consistent with the meaning of the above-mentioned provision. As to the Agreement on the Importation of Educational, Scientific and Cultural Materials of 1950,[38] which provides special facilities for the importation of books and publications of the United Nations or of any of its specialized agencies, the State concerned is not a party to it and it would not, therefore, be possible to invoke the provisions of that Agreement in this case. We have also requested information on whether the sales of United Nations publications to our distributor(s) in that country are covered by a specific agreement but we were informed by your Section that no such agreement exists.

4. In the absence of any binding applicable arrangements, an exemption from GST cannot, in this particular case, be requested. However, you may wish to consider an approach to the competent authorities of the State in question which is based on practical rather than legal considerations. It might be pointed out that GST should not operate so as to affect United Nations publications which disseminate knowledge of the Organization's activities within the territory of a Member State. Since the Guide on GST describes in chapter 4 services which are exempt from this tax, e.g., health care services, educational services and legal aid services, it may be inferred from this that certain exemptions are possible and it should not be too difficult to make the case that United Nations publications can be assimilated to educational services.

7 January 1991

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27. SALE OF TAX-FREE IMPORTED MATERIALS IN THE UNITED NATIONS CHILDREN'S FUND GREETING CARD OPERATION—MEANING OF THE TERMS "OFFICIAL USE" AND "PUBLICATIONS" USED IN ARTICLE II, SECTION 7 (*b*) AND (*c*), OF THE 1946 CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS—GENERAL PRACTICE OF STATES IN THIS REGARD

Memorandum to the Director, Greeting Card Operation, United Nations Children's Fund

With regard to the recent inquiries by one of the National Committees for UNICEF on the sale of the UNICEF Greeting Card Operation products, please find a copy of a note for the file prepared by this Office on the past practice and interpretation of article II, section 7, of the 1946 Convention on the Privileges and Immunities of the United Nations.[39]

Note for the file

SALE OF TAX-FREE IMPORTED MATERIALS IN THE UNICEF GREETING CARD OPERATION

I. *Introduction*

1. A question has arisen in relation to a sale of tax-free imported materials in the UNICEF Greeting Card Operation (hereinafter: UNICEF GCO), in the light of article II, section 7, of the 1946 Convention on the Privileges and Immunities of the United Nations (hereafter: the Convention), which conditions the sale of such tax-free imported articles upon agreement with the host country. In the language of section 7:

"The United Nations, its assets, income and other property shall be:

"(*a*) ...

"(*b*) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations *for its official use*. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported *except under conditions agreed with the Government of that country*; (emphasis added)

"(*c*) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications."

2. The question of whether the sale of tax-free imported materials in UNICEF GCO is subject to an agreement with the host country was originated in a request made by a National Committee for UNICEF to this State's Ministry of Finance to import free of customs duties 200,000 kilograms of material consisting of greeting cards, posters, stickers, writing paper, books, booklets, calendars, cotton T-shirts, products of porcelain, glass or plastics, video cassettes and slides, all of which materials were designed for sale for the purposes of fund-raising on behalf of UNICEF.

3. The legal issue is whether the sale of tax-free articles in UNICEF GCO and the use of the proceeds for fund-raising purposes of the Organization could be considered an "official use" within the meaning of article II, section 7 (*b*), of the Convention, or a sale of publications which would not necessitate an agreement with the host country on terms and conditions of sale; or whether the sale of such imported articles could only be effectuated upon conditions agreed upon between UNICEF and the country in question.

II. *The 1946 Convention in the practice of the United Nations*

4. The term "publications" has consistently been interpreted by the United Nations to include not only books, booklets or any other printed matter, but also films and sound recordings prepared by or at the request of the United Nations. Thus, in a memorandum prepared by the United Nations Office of Legal Affairs in 1953 on the question of importation of films for distribution and sale in Member States, it was advised that films should be considered "publications" within the meaning of article II, section 7 (*c*), of the Convention, and that their importation and distribution constituted "official use".[40] The sale of UNICEF greeting cards has likewise been considered a sale of United Nations publications. Thus, the study prepared by the United Nations Secretariat on the practice of United Nations agencies in respect of privileges and immunities concluded that:

> "One of the most regular, as well as the largest, sale of United Nations publications is the annual sale of UNICEF greeting cards. The great majority of the hundred or more countries in which these cards are now sold permit their entry and sale without imposing any duty."[41]

5. In his note of 4 January 1990 to the Permanent Representative of (name of a Member State) on the question of exemption from customs duties for articles imported into this country for sale by the National Committee for UNICEF,[42] the Legal Counsel surveyed the general practice of States in this regard and concluded that:

> "Governments in countries where cards are sold have generally recognized that it would be inappropriate, as a matter of principle as well as law, for a Member State to impose customs duties on UNICEF GCO projects which are internationally determined and financed by contributions from Governments and from private sources. In most cases where the issue has been raised at all, the term 'official use' has been interpreted to include UNICEF fund-raising activities, so as to exempt the cards and calendars under article II, section 7 (*b*), or such materials have been treated as 'publications' under article II, section 7 (*c*) of the Convention."

III. *Conclusion*

6. It follows from the above that the sale of publications is not conditioned upon an agreement between the United Nations and the host country, nor is the import of any material for official use of the Organization. In the case in point, the imported articles can either be considered "publications" within the meaning of article II, section 7 (*c*), of the

Convention, and thus could be sold by UNICEF without having to agree first with the Government on the terms and conditions of sale, or else be considered articles imported for the purpose of fund-raising activities of UNICEF, the proceeds of which would be designated exclusively for the official use of the Organization.

7. With a view to avoiding future misunderstanding, it was decided to include in the Model Basic Cooperation Agreement between UNICEF and the Governments an express provision exempting articles designed for sale in UNICEF GCO from taxes, customs duties and any import restrictions. Article XVII, entitled "Greeting Cards and other UNICEF products", accordingly provides:

> "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."

16 April 1991

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28. QUESTION OF THE IMPORTATION OF AUTOMOBILES, FREE OF DUTY, BY OFFICIALS OF THE ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC—SECTION 17 (*i*) OF THE 1954 AGREEMENT RELATING TO THE HEADQUARTERS OF ESCAP

Note to the Permanent Representative of a Member State

The Legal Counsel of the United Nations has the honour to refer to the Agreement relating to the Headquarters of the Economic and Social Commission for Asia and the Pacific,[43] concluded on 26 May 1954.

It has been brought to the Legal Counsel's attention that certain officials of ESCAP experience difficulties in importing, free of duty, automobiles to the host country. In this connection, the Legal Counsel wishes to take this opportunity to remind the competent authorities of the host State that matters relating to the importation, transfer and replacement of automobiles are regulated by the pertinent provisions of section 17 (*i*) of the 1954 Agreement which, in particular, stipulates the following:

> "Officials of [ESCAP] shall enjoy within and with respect to the territory of [the host State] the following privileges and immunities:
>
> ". . .
>
> "(*i*) The right to import, free of duty and other levies, prohibitions and restrictions on imports, their furniture and effects within six months after first taking up their post in [the host State]; *the same regulations shall apply in the case of importation, transfer and replacement of automobiles as are in force for the resident members of diplomatic missions of comparable rank.*" (emphasis added)

The above provisions clearly indicate that ESCAP officials are entitled, within six months after first taking up their post in the host State, to import free of duty and other levies and restrictions on imports their "furniture and effects". However, as far as the importation of automobiles is concerned, a different requirement is applicable, namely, an entitlement to the same regulations as are in force in the host State for the resident members of diplomatic missions of comparable rank.

Such an understanding is correctly reflected in the Regulation of the Ministry of Foreign Affairs on motor vehicles in relation to persons entitled to privileges, which came into force on 19 June 1989. According to article 5.4 of the Regulation, staff members of the office of an international organization of level and rank equivalent to that of a (article 5.1) diplomatic agent of ambassadorial rank or of a (article 5.2) diplomat of lower ranks or a career consular officer shall be entitled to the same number of motor vehicles as the above-specified individuals. The Regulation does not establish any time-limit for the above categories of individuals concerning the right to import a free-of-duty automobile after first taking up their posts in the host State. The six-month time-limit is specified by the Regulation, pursuant to article 5.3, only with respect to the administrative and technical staff of a diplomatic mission.

Therefore, in the view of the Organization, the provisions of the second part of subparagraph (*i*) of section 17 should not be considered as establishing a six-month time-limit for the importation of duty-free automobiles by ESCAP officials at the Professional level.

The Legal Counsel trusts that the host State will bring its treatment of ESCAP officials into complete conformity with its obligation under the 1954 Agreement with a view to ensuring the applicability to them of the same regulations concerning the importation of automobiles as are in force in the host State for resident members of diplomatic missions of comparable rank.

31 October 1991

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29. QUESTION WHETHER THE SECRETARY-GENERAL SHOULD WAIVE IMMUNITY OF A UNICEF STAFF MEMBER TO ENABLE HER TO TESTIFY BEFORE A NATIONAL COMMISSION OF INQUIRY—ARTICLE V, SECTIONS 18 (*a*) AND 20, OF THE 1946 CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS—ALERNATIVE WAYS FOR UNICEF TO COOPERATE WITH THE COMMISSION OF INQUIRY

Memorandum to the Director, Division of Personnel, United Nations Children's Fund

1. This is in response to your inquiry as to whether the United Nations should waive immunity in the case of a UNICEF staff member to enable her to testify before a commission of inquiry appointed by national

authorities to investigate an incident in which she was one of the unfortunate victims.

2. According to the information contained in the documents attached to your memorandum, the staff member was, at the time of the incident, travelling on official business of the Organization. In accordance with article V, section 18 (*a*), of the 1946 Convention on the Privileges and Immunities of the United Nations,[44] to which the State concerned became a party in 1948 without any reservations, officials of the Organization are immune from legal process, *inter alia*, in respect of all acts performed by them in their official capacity. The acceptance by the State in question of the application of that Convention to UNICEF was confirmed in article VII of the Agreement it concluded with UNICEF on 5 April 1978.[45]

3. Under article V, section 20, of the Convention, the Secretary-General "shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations". In this regard, we fully share the view expressed in your memorandum that, taking into account all relevant circumstances of this particular incident, the United Nations should not waive immunity in this case and, therefore, the staff member in question should not testify before the commission of inquiry.

4. It should be noted, however, that the commission of inquiry is entrusted with an important task and, among other things, should consider and recommend measures which may be adopted to prevent the recurrence of such incidents. Therefore, our Office is of the view that UNICEF should cooperate with the commission and provide it, to the extent possible, with the information that could facilitate its work. We would recommend that UNICEF should, in a note to the Ministry of Foreign Affairs, indicate its readiness to reply in writing to the questions which the Ministry would address to it on behalf of the Commission.

5. At this stage, in our view, it would be premature to approach the authorities concerned at the level of the Secretary-General. We would prefer the second alternative suggested in your memorandum, whereby the local representative of UNICEF will send a note to the Ministry of Foreign Affairs invoking immunity from legal process on behalf of the United Nations.

5 April 1991

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30. PROVISIONS OF THE 1946 CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, GRANTING UNITED NATIONS OFFICIALS EXEMPTION FROM TAXATION ON THE INCOME THEY RECEIVE FROM THE ORGANIZATION—GENERAL ASSEMBLY RESOLUTION 76 (I) OF 7 DECEMBER 1946—MEANING OF THE TERM "OFFICIALS"—TAX APPLICABLE TO PENSIONS AND LUMP-SUM COMMUTATION PAYMENTS

Note to the Permanent Representative of a Member State[46]

The Legal Counsel of the United Nations has the honour to refer to the note verbale of 5 September 1991 from the Permanent Mission of (name of a Member State) requesting information concerning the provisions of the Convention on the Privileges and Immunities of the United Nations[47] (the Convention). The information specifically requested concerns:

(*a*) The practice of States parties to the Convention, with specific reference to the application of article V, section 18 (*b*), of the Convention;

(*b*) Legal opinions rendered by the Secretariat concerning the provisions of article V, section 18 (*b*), of the Convention, especially on the application of those provisions to pensions paid to retired United Nations officials;

(*c*) The list drawn up by the Secretary-General in accordance with the provisions of article V, section 17, of the Convention specifying the categories of officials to which the provisions of articles V and VII of the Convention shall apply.

In principle, the practice of States which have acceded to the Convention without reservation is to abide by its provisions.

For the purposes of article V, section 18 (*b*), of the aforementioned Convention, the General Assembly provided a definition of the term "official" in its resolution 76 (I) of 7 December 1946. In that resolution, the Assembly approved the granting of the privileges and immunities referred to in articles V and VII of the Convention (including the provision relating to exemption from taxes) "to all members of the staff of the United Nations, with the exception of those who are recruited locally and not assigned to hourly rates". Consequently, according to this definition, United Nations officials recruited locally and not assigned to hourly rates have the right, whatever their nationality, to be exempted from income tax on salaries paid to them by the Organization.

The purpose of this exemption is to guarantee equal treatment of all officials, whatever their nationality, and to ensure that funds paid by all Member States to the Organization's budget are not returned to the Treasury of a State in the form of taxes levied on salaries paid to officials. The General Assembly stated these principles clearly in its resolution 78 (I) of 7 December 1946, in which it decided: "In order to achieve full application of the principle of equity among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation salaries and all allowances paid out of the budget of the Organization are requested to take early action in the matter."

It should be noted that, with a few exceptions, States parties to the Convention exempt their nationals serving at the United Nations from taxation on income they receive from the Organization. When such exemption has been refused by a State, the United Nations has applied as far as possible the provisions concerning the Tax Equalization Fund, established by the General Assembly in its resolution 973 (X) of 15 December 1955, in such a way that the amounts reimbursed by the United Nations to the officials involved are charged against the State's credit to the Fund.

Regarding taxes on pensions paid to United Nations staff, a distinction must be made between lump sums paid by the United Nations Joint Staff Pension Fund when a retirement benefit is commuted and the annual amount of the benefit as such.

Lump sums paid by the Fund when a retirement benefit is commuted are considered separation payments to the official concerned and are, consequently, exempted from taxes in accordance with article V, section 18 (*b*), of the Convention. In this limited sense of the term, "emoluments" are considered to include pensions.

As for the annual pension, or the pension proper as distinguished from the lump-sum commutation payment, the question of taxes owed is not regulated by any international agreement or by any United Nations internal rules, but depends upon the national legislation of States. The issue of whether and to what extent a State imposes taxes on pensions paid to international civil servants on active duty or retired is a matter depending on the domestic law of a State.

Legal opinions concerning the provisions of article V, section 18 (*b*), of the Convention and taxation of retirement benefits paid to United Nations personnel are contained in the study prepared by the Secretariat on the subject of the practice concerning legal status, privileges and immunities of the United Nations, the specialized agencies and the International Atomic Energy Agency, issued as a General Assembly document in 1967 under the symbol A/CN.4/L.118 and Add.1 and 2, and updated in 1985 under the symbol A/CN.4/L.383 and Add.1-3.[48]

The lists of United Nations Secretariat staff communicated to Governments of Member States are drawn up in accordance with Secretariat practice. According to this practice, the names of officials holding contracts that would begin after the list was drawn up or those holding contracts of less than one year in duration, for example, would not be included in this type of list. This practice is clearly described in the introduction to the annual reports submitted to the General Assembly containing the list of United Nations Secretariat staff.

In this connection, it should be emphasized that the information contained in the lists sent to Member States constitutes neither the legal basis for the application of the Convention on the Privileges and Immunities of the United Nations nor a condition to which its application is subject. The lists are simply an administrative tool to facilitate the application of the Convention and, as mentioned above, they do not include all officials of the Organization.

12 September 1991

31. INTRODUCTION IN THE LEGISLATION OF THE HOST COUNTRY CONCERNING THE ISSUANCE OF G-4 VISAS TO THE IMMEDIATE FAMILY OF STAFF MEMBERS HAVING G-4 VISA STATUS AND ADDITIONAL REQUIREMENTS TO BE MET BY CLOSE RELATIVES OTHER THAN SPOUSES AND MINOR UNMARRIED CHILDREN OF SUCH STAFF MEMBERS—ARGUMENTS MILITATING AGAINST IMPOSING SUCH REQUIREMENTS ON THE ISSUANCE OF G-4 VISA STATUS TO THE CLOSE RELATIVES UNDER CONSIDERATION

Note to the Permanent Representative of a Member State

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of the United States Mission to the United Nations and has the honour to raise with the Permanent Representative the changes which have recently been introduced by the United States authorities with respect to the issuance of G-4 visas to the immediate family of staff members holding G-4 visa status (referred to hereinafter as "staff members").

Under the United States immigration laws, the term "immediate family" includes close relatives other than spouses and minor unmarried children of staff members, provided that such other close relatives meet certain criteria.

Until the beginning of this year, these criteria were those enunciated in the Code of Federal Regulations of the United States, subpart C—Foreign Government Officials—paragraph 41.21, subparagraphs 3 (i), (ii) and (iii), on which are based the provisions of paragraphs 5 and 6 of the Secretariat administrative instruction ST/AI/294 of 16 August 1982 on "Visa status of non-United States staff members serving in the United States".

At the beginning of this year the United States Mission to the United Nations informed the Secretariat that additional criteria would have to be met by the close relatives in question to be eligible for G-4 visa status. The additional criteria are those provided for under subparagraphs 3 (iv) and (v) of that same part of the Code on Federal Regulations of the United States as mentioned above, which require, respectively, that such close relatives of staff members be:

"(iv) . . . recognized as dependents by *the sending Government* [emphasis added] as demonstrated by eligibility for rights and benefits, such as the issuance of a diplomatic or official passport and travel and other allowances, which would be granted to the spouse and children of the principal alien;"

"(v) . . . individually authorized by the Department."

Furthermore, the United States Mission made it clear to the Secretariat that, in the absence of the evidence provided for under (iv) above, "the applicant does not qualify as [a] close relative for G-4 visa purposes".

In imposing such requirements on the issuance of G-4 visa status to the close relatives under consideration, it does not seem that the United States authorities took into consideration the following points:

(i) Unlike foreign government officials, staff members do not have a "sending Government" within the meaning of the provisions quoted under (iv) above. In this respect, it is relevant to refer to the provisions of Article 100 of the Charter of the United Nations, which provides:

> "1. *In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any Government* [emphasis added] 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.
>
> "2. Each Member of the United Nations undertakes to respect *the exclusively international character of the responsibilities of the Secretary-General and the staff* [emphasis added] and not to seek to influence them in the discharge of their responsibilities."

(ii) Granting secondary dependants the same allowances awarded to spouses and dependent children entails a statement of budget and financial implications for consideration by the General Assembly. If approved, such a measure would require an increase in assessments for the Member States. However, it would not be realistic to expect Member States to authorize the United Nations to assume the costs that such requirements involve, e.g., repatriation travel, education grant or home leave. In this respect, it is necessary to point out that when staff members request a G-4 visa for a secondary dependant, they commit themselves to become financially responsible for such dependants.

(iii) Whether in the home country or at United Nations Headquarters, a staff member may be the only individual able to take care of and support an elderly parent or a minor sibling. A refusal of a derivative visa in these cases may force the staff member to choose between his/her career and filial or fraternal responsibilities. In this connection it should be recalled that Article 101, paragraph 3, of the Charter provides that ". . . Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible." Accordingly, international civil servants are recruited from quite different cultural environments and for some of them it might be totally unacceptable not to include elderly parents or young dependent siblings under the same household. A rigid policy which does not take into consideration the above-mentioned arguments will undoubtedly strain or limit the ability of the Secretary-General to recruit staff in accordance with the provisions of Article 101, paragraph 3, of the Charter.

(iv) While the posting of foreign government officials is usually limited to a term of duty averaging in general four years, this is not the case for the majority of staff members posted at Headquarters in New York. Therefore, they establish their residence and household in the United States for a prolonged period.

On the basis of the foregoing, it is therefore clear that the requirements applicable to foreign government officials cannot all be applicable to United Nations staff members.

The enforcement of such requirements *vis-à-vis* the United Nations since the beginning of this year eliminates any chance for staff members to

enjoy the possibility of reuniting with close relatives who, until recently, were granted G-4 visas and radically alters an established policy of the host country which was consistent with the relevant provisions of the 1946 Convention on the Privileges and Immunities of the United Nations.[49]

In this respect, it should be recalled that, in acceding to the above-mentioned Convention on 29 April 1970, the United States did not make any reservation to the provisions of article V, section 18 (*d*), according to which officials of the United Nations shall: "be immune, together with their spouses and *relatives dependent on them*, [emphasis added] from immigration restrictions and alien registration". The expression "relatives dependent on them" referred to above is as flexible as the expression "immediate family" referred to in the relevant part of the Code of Federal Regulations of the United States and embraces classes of relationship broader than spouses and minor unmarried children.

By virtue of section 34 of the final article of the above-mentioned Convention, the Government of the United States has undertaken to be "in a position under its own law to give effect to the terms of this Convention."

The Secretary-General would be grateful if renewed and urgent consideration could be given to this matter by the competent authorities with a view to reinstating the policy which prevailed prior to January 1991.

16 July 1991

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32. Legal basis of the United Nations authority to establish and operate telecommunications facilities on the territory of a State

Memorandum to the Senior Security Coordination Officer, Office of Human Resources Management

1. In connection with the questions raised by the Chief, UNDP Field Security Section, we would like to make the following comments.

2. Neither the Convention on the Privileges and Immunities of the United Nations[50] nor the Standard Basic Assistance Agreement contain provisions entitling the United Nations to install communications facilities without the prior approval of a given Government.

3. The authority of the United Nations to establish and operate telecommunications facilities comes from the International Telecommunication Convention[51] and the Agreement between the United Nations and the International Telecommunication Union.[52] Under article XVI of the Agreement, ITU "recognizes that it is important that the United Nations shall benefit by the same rights as the members of the Union for operating telecommunication services". Thus, as far as ITU is concerned, the United Nations has the rights of a member Administration, including, as to radio, that of registering the frequencies.

4. However, the United Nations can only operate as an Administration on the territory of a given State by virtue of an arrangement reached with its Government. This is usually done either through the inclusion of the relevant provisions in the text of a headquarters agreement or by special arrangement, frequently concluded in the form of an exchange of letters.

5. In seeking an arrangement with the particular Government, the United Nations usually emphasizes various factors and sometimes makes reference to Article 105, paragraph 1, of the Charter of the United Nations providing that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes. The United Nations also frequently brings to the attention of the Government that in order to exercise its functions efficiently it should have direct point-to-point contacts with its duty stations, which cannot be effectively exercised by ordinary communication channels.

6. In a number of cases, the United Nations has stressed the importance of radio communication facilities for ensuring the security and safety of its personnel and asked Governments to give quick and favourable consideration to a request to install communications facilities for these purposes.

29 May 1991

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33. QUESTION OF THE OWNERSHIP OF THE COPYRIGHT IN THE DESIGN OF A STAMP CREATED UNDER A SPECIAL SERVICE AGREEMENT CONCLUDED WITH THE UNITED NATIONS—QUESTION WHETHER THE DESIGNER WAS AN "INDEPENDENT CONTRACTOR" OR AN "EMPLOYEE" UNDER THE UNITED STATES COPYRIGHT ACT—POSSIBILITY UNDER THE ACT OF TRANSFERRING OWNERSHIP OF A COPYRIGHT

Memorandum to the Chief, United Nations Postal Administration

1. This responds to your memorandum of 11 June 1991 in which you asked this Office for assistance in the interpretation of the phrase "work made for hire" appearing in a form to be submitted by the United Nations to the United States Copyright Office for copyright registration of the design of a United Nations stamp. In particular, you ask whether the designer who created the design pursuant to a Special Service Agreement is an employee or whether this is a work made for hire under the United States Copyright Act.

2. For the reasons set out below we consider that:

(*a*) The designer has initial copyright in the design (see paras. 3-9);

(*b*) The United Nations Postal Administration (UNPA) has a contractual right to become copyright owner (see paras. 10-11);

(*c*) UNPA should immediately file a "recordation of transfer of copyright ownership" to protect its rights (see paras. 12-13).

(i) *The general rule*

3. The Federal courts have subject-matter jurisdiction over controversies arising from copyrights covered by the Copyright Act of 1976 (17 U.S.C. section 101—hereinafter, "the Act"), which replaced the 1909 version. However, until 1989, the "work made for hire" provisions of the Act were applied inconsistently by the different Federal District Courts. In 1989, the United States Supreme Court "granted *certiorari* to resolve a conflict among the courts of appeals over the proper construction of the 'work for hire' provisions of the Act" (*Community for Creative Non-Violence v. Reid*, 109 S.Ct. 2166 (1989)—hereinafter, "CCNV"). The opinion issued in that case has clarified and standardized the law in this area.

4. The Act provides that copyright ownership "vests initially in the author or authors of the work" (17 U.S.C. section 201 (*a*)). Thus, prima facie, the designer is copyright owner.

(ii) *Employment and work for hire exceptions*

5. The Act *allows an exception to the general rule if a work is made for hire by "an employee within the scope of his or her employment"* (emphasis added) (section 101 (1)); then "the employer or other person for whom the work was prepared is considered the author" and owns the copyright unless there is a written agreement to the contrary (section 201 (*b*)). The definition of the terms "employer" and "employee" are critical to the application of the statute, yet they are nowhere defined in the Act. This situation engendered much of the confusion among the Federal courts in deciding which works were "for hire" and which works were not.

6. The United States Supreme Court has decided in the CCNV case that "[t]o determine whether a work is a 'work made for hire' within the [section] 101 definition, a court should first apply general common law principles of agency to ascertain whether the work was prepared by an employee or an independent contractor, and, depending on the outcome, should then apply either section 101 (1) or section 101 (2)".

7. Works by independent contractors may be "for hire", *but only if they fit into one of nine categories, and were specially commissioned by a signed, written contract* (emphasis added) (section 101 (2)). The nine categories are as follows:

(1) A contribution to a collective work;

(2) A part of a motion picture or audiovisual work;

(3) A translation;

(4) A supplementary work;

(5) A compilation;

(6) An instructional text;

(7) A test;

(8) Answer material for a test;

(9) An atlas.

8. In the present matter, the "design" work for the S20 Vienna definitive stamp does not seem to fit into any of the nine categories of section 101 (2). The only other possibility to establish the work as "for hire" would be if the artist could be considered an "employee" of UNPA. Some of the factors under the common law of agency that determine "employee" status are as follows:

(1) Skill required;

(2) Source of instrumentalities, tools;

(3) Location of work;

(4) Duration of relationship between parties;

(5) Hiring party's right to assign additional projects;

(6) Extent of hired party's discretion over when and how long to work;

(7) Method of payment;

(8) Hired party's role in hiring and paying assistants;

(9) Regular business of hiring party;

(10) Provision of employee benefits;

(11) Tax treatment of hired party.

[CCNV]

9. Applying these legal parameters to the independent professional situation of the artist and the nature of the work that she performed, it is apparent that the artist was an "independent contractor" and not an "employee" within the meaning of the Act. Therefore, "authorship" and "initial copyrights" must be said to reside with the artist.

B. UNPA'S RIGHTS UNDER THE CONTRACT TO COPYRIGHT IN DESIGN

10. While UNPA has not acquired initial copyright as the "author", it does seem to be a "copyright owner" as a result of transfer of copyrights by the author, according to the "TITLE RIGHTS" [annex A, para. 3] provisions of the employment contract [CPTS/CON/04291]. Section 201 (*d*) (1) of the Act stipulates that "[t]he ownership of a copyright may be transferred in whole or in part by any means of conveyance" provided that it is "in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent" (section 204 (*a*)). These conditions appear to have been met.

11. Nevertheless, because there are many parts to a copyright and a copyright can be transferred "in whole or in part" (section 201 (*d*) (1)), the extent of ownership transferred must be ascertained. The language of the contract in this matter appears to have worked to convey to UNPA the entire copyright, including the five "exclusive" rights: reproduction, preparation of derivative works, public distribution, public performance and public display (section 106; 201 (*a*)).

C. PROTECTION OF UNPA'S COPYRIGHT INTEREST

12. Given the apparent relative status of the parties, the artist as "author" and the UNPA as "copyright owner" by virtue of transfer, the appropriate application to submit to the United States Copyright Office would be not "registration of copyright", but "recordation of transfer of copyright ownership".

13. The copyright claimant must give a brief "statement" summarizing the means by which the ownership of the copyrights was obtained. In this case, UNPA obtained ownership of the copyrights "by written contract", and such an entry should satisfy the "statement" requirement of the form. In addition, a copy of the document or work to be registered must be included and the registration fee paid.

14. UNPA should, therefore, apply immediately to the Copyright Office for recordation of transfer of copyright ownership (section 205 generally). The timing of application can affect copyright ownership *vis-à-vis* competing applications (section 205 (*e*)) and is a necessary prerequisite to litigation (section 205 (*d*)). However, the common law has established that lack of recordation does not necessarily invalidate a transfer of copyright ownership.

12 July 1991

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34. ADVICE ON THE USE OF INCOTERMS AND SIMILAR SHORTHAND EXPRESSIONS OF CONTRACTUAL TRADE TERMS IN UNITED NATIONS CONTRACTS

Memorandum to the Director, Supply Division, United Nations Children's Fund, Copenhagen

1. This is in response to your letter dated 10 July 1991 in which you requested clarification of the advice we provided in a previous memorandum, cautioning against excessive reliance on INCOTERMS and similar shorthand expressions of contractual trade terms. That advice is based upon the considerations discussed below.

Background

2. There have developed in commercial practice, both internationally and within domestic trading practice, shorthand means of referring to, and incorporating into sales contracts, contractual terms regulating certain rights and obligations of the parties to the contract. Such shorthand expressions are hereinafter referred to as "shorthand trade terms". Examples of traditional shorthand trade terms are "CIF" and "FOB". Shorthand trade terms may, for example, regulate such matters as the party that is responsible for arranging and paying for the carriage of the goods and insurance; the party that is responsible for obtaining export and import licences; and the place of delivery of the goods. Shorthand trade terms typically also establish the time when the risk of loss of or damage to the

goods passes from the seller to the buyer. Shorthand trade terms are used in sales contracts as a means of regulating such issues without having to do so expressly in sometimes lengthy contractual clauses.

3. Shorthand trade terms do not, of course, have intrinsic content or meaning, and do not in and of themselves indicate which rights and obligations of the parties they encompass or the way in which those rights and obligations are regulated. The terms must be given such content and meaning, either by definitions provided by the rules of the legal system that governs the contract or by reference in the contract to a set of definitions of the shorthand trade terms used, such as the International Chamber of Commerce (ICC) INCOTERMS, 1990,[53] which are generally accepted definitions in international trade.

Definitions provided by rules of national legal systems

4. Some national legal systems, such as that of the United States, define the meaning and content of shorthand trade terms. In the United States, such definition is contained in the Uniform Commercial Code (UCC). For example, article 2-319 defines the terms "FOB" and "CIF", and articles 2-320 and 2-321 deal with "CIF" and "C&F". In general, the meaning of such terms, if used in a contract that is governed by the law of states in the United States which apply the UCC, will be as set forth in those articles, unless the contract itself refers to some other applicable law or definitions.

Reference in contract to set of definitions; INCOTERMS

5. A sales contract that employs shorthand trade terms may, instead of relying on definitions provided by rules of national law, refer to a recognized set of definitions to provide the meaning and content of the shorthand terms used. Most legal systems permit the parties to a contract to refer to such sets of definitions to define the terms used.

6. A set of shorthand trade terms and definitions for use in international trade is provided by INCOTERMS. INCOTERMS were developed by the International Chamber of Commerce as a means of avoiding difficulties encountered by traders arising from the fact that different national legal systems give different meaning and content to the same or similar trade terms (e.g., CIF, FOB). Those disparities have led to uncertainties and disputes as to how particular trade terms used in international sales contracts should be defined. INCOTERMS were originally adopted by ICC in 1953 and were revised and updated in 1976 and again in 1990. When a contract uses a particular trade term and provides that it is to be defined in accordance with INCOTERMS, the INCOTERMS definition will normally govern the content and meaning of the trade term regardless of the international nature of the contract.

Difficulties encountered in the use of trade terms in United Nations contracts

7. Difficulties have arisen in the use of shorthand trade terms in United Nations contracts, owing essentially to a failure by those preparing the contracts to appreciate fully the nature, function, usage and limitations

of shorthand trade terms. We have encountered numerous cases where a shorthand trade term has been used in a contract without identification of the source of interpretation (e.g., ICC INCOTERMS or UCC); and in some cases the trade terms have been incorrectly used or countermanded by conflicting instructions. In those cases, the legal consequences were quite different from those originally intended. In particular, the problems discussed in the following paragraphs have arisen.

(a) *Insufficient awareness of legal consequences of use of shorthand trade terms*

8. Sometimes, shorthand trade terms are inserted in United Nations contracts without sufficient awareness of the legal consequences of the use of the terms. In one case, an automobile was purchased under INCOTERMS CIF for use in the field. It was to be shipped from the port of manufacture to the nearest port of destination but to be driven by road to the place of final destination. The automobile was damaged in transit when being driven to the place of final destination. The United Nations unit involved was surprised and disappointed to learn that it could not compel the manufacturer to replace the automobile; it had not realized that although, under CIF as defined by INCOTERMS, the seller was obliged to contract and pay for the cost of insurance and shipment of the automobile to the final destination, the risk of loss passed to the purchaser when the manufacturer delivered the automobile to the ocean carrier for shipment. Furthermore, although the automobile was insured, the insurance carrier was only prepared to repair but not to replace the automobile. The United Nations unit had to accept the automobile and the offer by the insurer to pay for the repairs.

(b) *Lack of definition of trade terms*

9. Trade terms have been used in United Nations contracts without giving any indication as to which rules are to define the meaning and content of the terms. As noted above, the legal consequences that arise from the use of a particular trade term depend upon the definition that applies to the term. In one case, a contract with a supplier outside the United States referred simply to the term "CIF". No indication was given as to whether that term was to be defined according to the definition in INCOTERMS or the definition contained in the rules of a particular national legal system. This led to uncertainty and confusion as to meaning and legal consequences of the term used.

(c) *Conflicting instructions*

10. When shorthand trade terms are used no other conflicting instructions or contract terms should be incorporated in the contract document; otherwise, uncertainty and ambiguity would result and the purpose of using the shorthand trade term would be defeated.

Recommendations

11. For the reasons explained above, this Office has in the past recommended caution in the use of shorthand trade terms. Although they

are and ought to be used for convenience in purchase orders, care should be taken to:

(*a*) Specify the definition authority (e.g., ICC INCOTERMS 1990);

(*b*) Include no conflicting or contradictory instructions.

12. Moreover, when INCOTERMS are used, they should be used unaltered, in their defined form. If those terms were to be deviated from, the advantages of using them would be lost: the meaning of such terms would be in doubt and the intent of the parties would have to be ascertained, making arbitral proceedings likely.

13. Furthermore, shorthand trade terms should be used only with a full understanding of their implications and legal consequences, the main one of which is to pass the risk of loss to the buyer upon the seller completing the shipping formalities (pay freight, effect insurance and hand over to carrier in CIF). The advice of this Office should be sought in any case of doubt.

14. We further recommend that, when shorthand trade terms are used, only the INCOTERMS version should be used, regardless of whether the contract is with a United States or a foreign firm. The dual approach which has hitherto been used by some agencies (i.e., using INCOTERMS in contracts with non-United States firms, and using the UCC trade terms in contracts with United States firms) has led to confusion and is undesirable, perhaps even unnecessary. The proper way to refer to INCOTERMS in the contract (and, in particular, to the most recent (1990) version) is to add, after the shorthand term, "ICC INCOTERMS 1990".

15. In more complex contracts, it would be preferable to elucidate verbally the relevant obligations of the parties and the contractual terms and conditions.

16. You may wish to know that ICC has published booklets containing the 1990 version of INCOTERMS, as well as a "user's guide" to INCOTERMS. It would be desirable for the substantive units of agencies preparing contracts or purchase orders using INCOTERMS to have those publications.

12 September 1991

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANISATION

LEGAL OPINION OF THE INTERNATIONAL LABOUR OFFICE[54]

Observations of the International Labour Office concerning the request for an opinion submitted to the Court of Justice of the European

Communities by the Commission with regard to the competence of the Community to "conclude the Chemicals Convention, 1990 (No. 170)"

Note to member States

1. The submission made by the Commission to the Court seeks to demonstrate, *inter alia*, the competence of the Community to "conclude" the Chemicals Convention, 1990 (No. 170).[55] The relevant arguments are based on considerations of Community law, which obviously fall outside the competence of the International Labour Office. It also concerns developments related to ILO's Constitution,[56] its constitutional practice and its standard-setting system (including more specifically Convention No. 170), for which certain States members of the Community have requested comments from ILO. It is fully in line with the latter's constitutional functions, as they have developed in practice, to provide member States or any other interested bodies with clarifications which they may consider useful as regards the meaning or scope of the provisions of the Constitution or of international labour conventions. However, these clarifications are given with the usual proviso that, in accordance with article 37 of the ILO Constitution, only the International Court of Justice is competent to give an authoritative interpretation of the obligations deriving from the Constitution or a subsequent convention.[57]

2. The matters brought before the Court by the Commission concern the relationships between two legal systems which have been established by treaty. Whatever internal differences there may be between these two systems, in international law they are placed on an equal footing, and the law of treaties, apart from the general principles which can be found in article 234 of the Treaty of Rome[58] itself, does not offer a clear-cut solution to establish an order of priority between them. Furthermore, and in contrast perhaps to the impression given by certain references to the Office's "pragmatism" (page 6 of the submission), the provisions of the Constitution of the International Labour Organisation are not more "flexible" than those of the Treaty of Rome. In this connection, as shown by the documents appended to the Commission's submission,[59] while the International Labour Office has admittedly spared no efforts to propose practical solutions to the various problems affecting the relations between ILO and the Communities (these proposals have not yet been endorsed by the representative bodies of the Organisation), these efforts were made solely to ensure that the rules of these two systems were applied and interpreted so as to reconcile as much as possible the obligations deriving from each of them.

3. From this point of view, in order to have a better understanding of the problem, it seems important to place the various specific questions raised in the request for an opinion in relation to a more general analysis of the nature and the particular characteristics of the obligations of member States under the ILO Constitution.

4. In this regard a distinction between the following four points would appear necessary: the obligations for member States deriving from their membership of ILO; tripartism; international labour conventions; and supervisory procedures.

A. *Nature of the obligations resulting from membership of ILO*

5. In accordance with article 1 of the Constitution, ILO is called upon to work towards the implementation of the programme set out in the preamble to the Constitution and in the Declaration concerning the aims and purposes of ILO which is annexed to it. This programme aims at the constant improvement of working conditions and social protection as well as the dissemination of information on progress in these fields throughout the world. "Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries"—here the Organisation seeks to achieve progress in social conditions by a system of "levelling upwards". From the outset article 19 of the Constitution was conceived as the key instrument in this approach. The obligations deriving from it should be considered from this point of view.

6. Thus, a State which becomes a member of the Organisation is not a more or less passive subject of particular rights and obligations. It agrees to participate, actively and in good faith, in the implementation of the program in question. With regard to standard-setting work, this means a substantive contribution, on the basis of national experience, to the technical preparation of conventions as well as the implementation of adopted standards once national conditions make this possible. Although the Constitution does not establish a formal duty to ratify conventions, States are still legally bound, particularly in the framework of article 19.5 of the Constitution, to help the Organisation fulfil its mission by endeavouring in good faith to ratify the conventions which can be implemented at the national level, without waiting for other States to do the same. It may be said in this regard that, in the interest of ensuring the greatest possible respect for the obligation incumbent on the Twelve by virtue of their ILO membership, the action of the competent body at the European level should not be such as to prevent States that are able to accept obligations under an international labour convention from doing so.

B. *Tripartism*

7. In accordance with the ILO Constitution, complemented by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144),[60] as well as the specific provisions of the other Conventions, the social partners play a fundamental role at all stages of the Organisation's standard-setting activities. Thus, they are consulted during the technical preparation of standards (Convention No. 144); they participate fully in their adoption (articles 3, 4 and 19 of the Constitution); they are consulted on the proposals to be submitted to the competent authority in accordance with paragraph 5 (*b*) of article 19 of the Constitution (Convention No. 144); and they play an active part in the supervisory system (articles 23, 24 and 26 of the Constitution and Convention No. 144).

8. In doing so the representatives of the employers and workers act quite independently of their Governments. The statement, in paragraph 5 (*c*) of the Commission's request for an opinion, that when participating in the negotiation of international conventions the representative of the social partners are not acting as such, but as representatives of mem-

ber States, is in direct contradiction to the express stipulations of the Constitution. At the International Labour Conference, employers and workers are part of a national delegation, but they represent only their constituents (article 3, paragraph 1, of the Constitution); they are required to be chosen in agreement with the most representative industrial organizations (article 3, paragraph 5, of the Constitution) and are entitled to vote individually (article 4 of the Constitution). There are even cases where a non-governmental delegate to the Conference exercises his power under article 26, paragraph 4, of the Constitution to submit a complaint against the Government of his country.

9. Consultation with the social partners, as laid down by the Constitution, by Convention No. 144 or by the provisions of particular conventions (such as articles 3 and 4 of Convention No. 170), is not simply a formal requirement, as the request for an opinion suggests. Rather, it means regular and ongoing involvement of the social partners in the implementation of standards. The evolution of the terminology used over the years is significant in this regard: while the first few instruments of ILO foresaw that member States should take measures "following consultation" with industrial organizations, the current wording (see the example in article 4 of Convention No. 170) provides that measures should be taken "in consultation" with these bodies. Convention No. 144, by referring to "effective consultations", is along the same lines.

10. There is no doubt that the tripartite structure of ILO represents a major obstacle to the opening up of the Organisation to entities other than States, such as regional integration organizations, and that it gives rise to thus far unresolved difficulties with regard to the implementation at the supranational level of member States' obligations under the ILO Constitution.

C. *The specific nature of international labour conventions*

11. An outline of the principal aspects of this specificity seems indispensable in order to determine correctly to what extent a conflict may actually arise between the obligations to which one State may be subjected under an ILO convention and under derived Community law.

12. ILO conventions do not aim as such to promote the harmonization of the legislation of the various member countries (even if they contribute to this); they seek to establish standards that are intrinsically valid, taking into account the level of a country's development. As a rule the standards adopted are not an obstacle to the application of a higher standard in social terms. The Organisation's Constitution (article 19, paragraph 8) thus expressly safeguards what has already been gained at the national level in the form of more favourable conditions than those provided for in the conventions. Moreover, ILO conventions are only rarely considered "self-executing" and more often than not leave a wide margin of freedom to member States as to the manner in which they should attain the objective sought.

13. In these circumstances it is difficult to see from a strictly legal point of view how the ratification of a convention by States which are

members both of ILO and the Communities would be such as to "impair future advances in Community law". Indeed, it is by reason of article 19.8 that member States bound by ILO conventions may incorporate in their legal system advances resulting from Community law.

14. From a more practical point of view, it may be asked whether the (slight) risk of incompatibility with Community law really poses a problem. The case of the dispute concerning the night work of women in France, cited by the Commission, is instructive in this regard: there was no Community standard on the subject of night work, while the former ILO convention, by which France was still bound, protected working women. The Court of Justice of the European Communities, basing its opinion on the 1976 Directive concerning equality of treatment, considered that the aim of protection no longer justified a distinction between men and women in this field. At almost the same time ILO was adopting new standards in the field which applied to both sexes. Thus, the Court's decision will receive full effect with the denunciation of the former Convention and, if considered appropriate, the ratification of the new one.[61] And if, in the final analysis, it is the ILO standard which has to give way, at the appropriate time (that is, the time at which denunciation is possible), it may be asked to what extent Community law would really be "affected" by the adherence of a member of the Community to an ILO convention.

D. *The supervisory system*

15. A brief reminder of this system is necessary in order to have a precise appraisal of the implications of a possible ratification by the "competent authority" of the Community.

16. The ILO Constitution has established a very sophisticated system for the supervision of the application of standards within the Organisation. Even before a convention is ratified, every member is bound to submit the text to the competent authority and to inform the Director-General of ILO of measures taken in this regard. To avoid any misunderstanding it should be recalled that the constitutional practice of the Organisation recognizes that these obligations have a dual objective: that of mobilizing public opinion and that of taking measures to give effect to the standard in question. In this regard the Office has accepted that the "competent authority" under article 19, paragraph 5, of the ILO Constitution may, in the case of a regional integration organization, be the same as the body in the grouping to which legislative authority in this field has been transferred, but this does not mean that submission to such a body exhausts all the constitutional obligations of the member State under article 19.5 and having regard to this practice. It should also be emphasized that if a convention cannot be ratified in the short term, the member is still under an obligation to report periodically to the Director-General, stating the difficulties which prevent or delay this ratification. Once the Convention has been ratified, the member is obliged to report regularly on the measures taken to implement the convention. These reports are examined by a special Committee of Experts as well as by the General Conference. Moreover, articles 24 onwards of the Constitution provide for procedures for making representations and complaints concerning an alleged

failure by a member to secure the effective observance of a convention to which the member is a party.

17. In the context of a possible regionalization of adherence to a convention, under the formula envisaged by the Commission and the Office, several questions concerning the supervisory system would still have to be resolved. The responsibility for implementing the convention in the territory of a member State would no doubt remain essentially with that State. Similarly, the substantive content of the reports on the application of the convention, as well as the contribution of the social partners, should very likely continue to be prepared at the national level. Normally the "party accused" in any representation or complaint could be none other than the party at fault; that is generally the State. It is of course possible to envisage arrangements whereby any report and any procedure would go through the regional body, but it would then be necessary to ensure that this is not done at the expense of an excessive complication of the supervisory system or the weakening of its efficiency. Finally, it should be recalled that, under article 26, paragraph 1, of the ILO Constitution, only a member State that has ratified a convention is entitled to lodge a complaint alleging the non-observance of the Convention by another ratifying State.

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18. It can be seen from the foregoing observations that the matter is highly complex and it is no coincidence that it has been under consideration for some 10 years. This complexity should, however, not make one lose sight of two essential considerations which it seems useful to recall in conclusion.

19. First, the impasse in which the apparent conflict of obligations could place the Community members of the Organisation would not be in the interest of either organization:

—It would certainly not be in ILO's interest because the European States have traditionally played a catalytic role in the Organisation and it is important for the latter not to see a decline in ratifications from these countries;

—Nor does it seem to coincide with the interest which the Community should logically have, if only from the point of view of competition, to promote throughout the world social standards which bear as great a resemblance as possible to its own, as is precisely the case of the convention concerning safety in the use of chemicals at work, for which the Commission's submission rightly illustrates the relationship with certain Community directives. It is quite clear that the process of "levelling upwards" may very likely be hampered if the Community States are prevented from ratifying conventions as a result of such an impasse.

20. Secondly, in the light of the foregoing considerations, it seems that such an impasse can easily be avoided. Quite apart from the obligations which are binding on the States of the Community by virtue of their mem-

bership of ILO, these considerations in fact stress the very specific nature of ILO standards and suggest that it would not be possible to blindly extrapolate in their regard principles or methods of reasoning that have been developed in connection with international instruments of a very different nature and purpose.

12 November 1991

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2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Question whether membership of FAO by a member organization would entitle that member organization also to participate in joint subsidiary bodies at FAO—Interpretation of the so-called Vienna clause

Opinion of the Legal Counsel given at the 99th session of the Council of FAO (June 1991)

I have been asked to give an opinion on two questions:

(1) Whether membership of FAO by a member organization would entitle that member organization also to participate in joint subsidiary bodies of FAO, such as the Codex Alimentarius (a joint FAO/WHO body) and the CFA (a joint United Nations/FAO subsidiary body);

(2) If the answer to the first question is yes, how would this affect the interpretation of the Vienna clause, and in particular would this mean that a member organization of FAO would be assimilated to a member State for the purpose of eligibility for participation in other agreements outside FAO using that clause?

In answer to the first question, in my opinion membership by a member organization in FAO would entitle that member organization to participate in bodies operated jointly with other organizations such as the Codex Alimentarius, a joint FAO/WHO body, and the World Food Programme Committee on Food Aid Policies and Programmes (CFA), a joint subsidiary body of the United Nations and FAO. The basic documents establishing both of these joint bodies allow for membership by member nations, or member States of one of the parent organizations. The effect of the proposed assimilation clause in the amendments to the FAO Constitution, however, would be to allow regional economic integration organizations that are members of FAO, as one of the parent organizations, also to be eligible for membership in such bodies. This would be consistent, in the case of the Codex Alimentarius, with its status as a Joint Commission established under article VI of the FAO Constitution. Following the general principle set down in the proposed amendments to the Constitution, member organizations would not be eligible for election in their own right to such joint bodies, but would merely exercise the rights of membership of their member States that are elected, in accordance with the principle of the alternative exercise of membership rights. The issue of eligibility for

election to the Codex Alimentarius does not of course arise, since membership in the Codex is open to all member nations (and hence member organizations) that are interested in international food standards and that have notified the Director-General of FAO or WHO of their desire to be considered as members. However, I would point out that the exercise of rights of membership may involve changes in the Rules of Procedure and working methods of such joint bodies. Thus my opinion would be without prejudice to whatever procedural decisions may be required by the relevant intergovernmental bodies.

Turning to the second question, I should perhaps give a word of explanation about the so-called Vienna clause. This is the clause found at the end of most international agreements that specifies the states that are entitled to become parties to the agreement. The normal wording refers to States Members of the United Nations, any of the specialized agencies or IAEA. The question is, with regard to the assimilation clause in the proposed amendments to the FAO Constitution, that is, the provision that reads "Except as otherwise expressly provided, any reference to Member Nations in this Constitution shall include any Member Organization", how does this clause affect the Vienna clause? More particularly, the question is, as I understand it, if the Constitution of FAO indicates that references to member nations include member organizations, would this mean that the reference to any State that is a member of any specialized agency in the Vienna clause would automatically include any member organization of FAO?

The answer to this question is no. The assimilation clause is merely a drafting technique in order to avoid having to spell out in the Constitution the words "and Member Organizations" in every article of the Constitution. It does not mean that a member organization would be equated for all purposes with a member nation. Its scope of application is also specifically limited to the FAO Constitution itself. It would thus apply only within the framework of the Constitution and to any subsidiary or joint subsidiary body established within that framework. It would apply, as I have already mentioned, to the Codex Alimentarius and the CFA, which are joint subsidiary bodies of FAO. The effect of the assimilation clause, however, would not extend beyond the confines of the Constitution, and would thus have no effect on the Vienna clause, which would remain limited to States.

I wish to add that I have consulted the United Nations Legal Counsel on this matter, and the above opinion is shared by him.

NOTES

[1] United Nations, *Treaty Series*, vol. 828, p. 305.

[2] See the report of the Preparatory Committee for the United Nations Conference on Environment and Development, *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 46* (A/45/46), annex I, para. 8.

[3] See para. 64 of the report (A/AC.237/6).

[4] *Juridical Yearbook, 1968*, p. 185.

[5] *1971 I.C.J. Reports*, para. 22.

[6] S/22508, paras. 3 and 4.

[7] S/22509.

[8] See *Repertory of Practice of United Nations Organs, Supplement No. 3*, vol. II.

[9] See for example the legal opinion of 26 November 1969 reproduced in *Juridical Yearbook, 1969*, p. 212.

[10] "The agreement between States as a criterion to distinguish public from private international organizations is widely used, and is officially accepted by the United Nations . . . an international agreement by States is needed to establish the separate legal personality of the new organization, and . . . as a separate entity". H. G. Schermers, *International Institutional Law* (Sijthoff, 1980), p. 11.

[11] The Republic of the Marshall Islands became a member of ESCAP at the forty-eighth session of the Commission; see *Official Records of the Economic and Social Council, 1992, Supplement No. 11*, E/1992/31 and E/ESCAP/889, p. 102.

[12] The Federated States of Micronesia became a member of ESCAP at the forty-eighth session of the Commission; ibid.

[13] For the list of these agencies, see *International Court of Justice, Yearbook 1990-1991*, pp. 60-62.

[14] See *Repertory of Practice of United Nations Organs*, vol. V, 1955, Article 96, pp. 90-91, and *Supplement No. 1*, vol. II, 1958, Article 96, pp. 330-333.

[15] UNV form 3a-E.

[16] As stated in paragraph 5 of article IX of the Standard Basic Assistance Agreement, "The expression 'persons performing services' as used in articles IX, X and XIII of this Agreement includes . . . volunteers . . ."

[17] United Nations Development Programme, Basic Documents Manual, chap. II-1.

[18] General Assembly resolution 40/64 G, annex.

[19] United Nations, *Treaty Series*, vol. 1249, p. 13.

[20] Ibid., vol. 14, p. 185.

[21] Ibid., vol. 289, p. 3.

[22] Ibid., vol. 1115, p. 331.

[23] Ibid., vol. 520, p. 151.

[24] Ibid., vol. 976, p. 3.

[25] Ibid., vol. 999, p. 171.

[26] General Assembly resolution 44/128, annex.

[27] United Nations, *Treaty Series*, vol. 1108, p. 151.

[28] *The United Nations Disarmament Yearbook*, vol. 9: 1984 (United Nations publication, Sales No. E.85.IX.4), pp. 453-468.

[29] *Juridical Yearbook, 1983*, p. 139.

[30] United Nations, *Treaty Series*, vol. 335, p. 211.

[31] Ibid., vol. 125, p. 3.

[32] Document TD/SUGAR/11/5.

[33] United Nations, *Treaty Series*, vol. 1, p. 15.

[34] Ibid., vol. 500, p. 95.

[35] *Juridical Yearbook, 1975*, p. 87.

[36] United Nations, *Treaty Series*, vol. I, p. 164.

[37] Ibid., vol. 1, p. 15.

[38] Ibid., vol. 131, p. 25.

[39] Ibid., vol. 1, p. 15.

[40] Study prepared by the Secretariat on the Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency concerning their status, privileges and immunities. Documents A/CN.4/L.118 and Add.1 and 2, para. 195 (ILC Yearbook, 1967, vol. II, p. 251). The sale of United Nations publica-

tions was initially conceived of as the normal channel of distribution of United Nations publications (see ibid., paras. 196-197).

[41] Ibid., para. 198.

[42] *Juridical Yearbook, 1990*, p. 293.

[43] United Nations, *Treaty Series*, vol. 260, p. 35.

[44] Ibid., vol. 1, p. 15.

[45] Ibid., vol. 1257, p. 9.

[46] Translation from French prepared by the Secretariat of the United Nations.

[47] United Nations, *Treaty Series*, vol. 1, p. 15.

[48] Recent opinions on exemptions of officials of the United Nations from taxation are to be found in *Juridical Yearbook, 1990*, chap. VI, A, sections 35, 36 and 37.

[49] United Nations, *Treaty Series*, vol. 1, p. 15.

[50] Ibid.

[51] See *International Telecommunication Convention, Nairobi, 1982*, General Secretariat of the International Telecommunication Union, Geneva.

[52] United Nations, *Treaty Series*, vol. 30, p. 315.

[53] A/CN.9/348, annex.

[54] 1. On the basis of article 228, paragraph 1, clause 2, of the EEC Treaty, the Commission of the European Communities requested on 16 July 1991 an opinion of the Court of Justice of the European Communities concerning the competence of the Community to ratify ILO Convention No. 170 concerning Safety in the Use of Chemicals at Work (see No. 2191, *Official Journal*, No. 245/06, 20 September 1991).

2. In support of its request, the Commission noted that issues dealt with by Convention No. 170 were the subject of directives (89/393/EEC, 90/394/EEC, 88/379/EEC and 67/548/EEC) adopted on the basis of articles 100, 100 A and 118 A of the EEC Treaty. Consequently, following the case-law of the CJEC (Judgement of 31 March 1971, case 22/70, re E.R.T.A., *Reports of Cases before the Court of Justice*, 1971, p. 263), according to which member States may not assume international obligations *vis-à-vis* third parties once the Community has laid down Community standards in a specific field, only the Community would be entitled to ratify such a Convention.

3. After having examined the problems which would result from the ratification of the Convention by the Community itself and taking into account the specificity of ILO, the Commission concluded that they should not present any obstacle to the exercise by the Community of its exclusive competence in the field.

4. Following a request made to the International Labour Office by a certain number of States of the Community to make its eventual observations known on this latter point, the Office transmitted to member States the note on the issue.

[55] International Labour Office, *Official Bulletin*, vol. LXXIII, 1990, Series A, No. 2, p. 71.

[56] United Nations, *Treaty Series*, vol. 15, p. 40 (with the later amendments).

[57] In this connection it should be noted that, while it is generally up to the (tripartite) Governing Body of ILO to request an advisory opinion of ICJ in the framework of article 96 of the Charter of the United Nations, it has been maintained that in the framework of article 37 of the Constitution a member State which disagrees with the Organisation's position may submit a matter to the Court.

[58] United Nations, *Treaty Series*, vol. 298, p. 11.

[59] It should be pointed out in this connection that the documents which appear in annex 5 of the Commission's submission as "ILO documents to the Conference" are in fact a combination of a document prepared for the Governing Body's Committee on Standing Orders (where it had been the subject of some reservations) and a quite unofficial working paper prepared for a tripartite meeting of Community members held outside ILO's constitutional and organizational framework.

[60] *International Labour Conventions and Recommendations 1919-1991* (International Labour Office, Geneva), vol. II, p. 1106.

[61] A 1986 decision of the Italian Constitutional Court on the subject of night work of women demonstrates that a possible conflict with the Community standard is not the only circumstance in which a State may not be in a position to implement fully an ILO convention which it has ratified.

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

[No decision or advisory opinion from international tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 1991.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Norway

EIDSIVATING HIGH COURT

APPEAL AGAINST THE JUDGEMENT OF THE OLSO CITY COURT: JUDGEMENT OF 30 SEPTEMBER 1991

Dismissal of an officer who served in the Norwegian UNIFIL force in Lebanon for undertaking journalistic work in the area in contravention of the order—Objective basis for barring the appellant from carrying out this work—Appellant's claim for compensation for wrongful dismissal—Duty of UNIFIL personnel to remain neutral in the conflict—Question of whether the appellant was obliged under international law to undertake the acts from which he was ordered to abstain—Validity of the decision of the Norwegian Ministry of Defence

JUDGEMENT

Terje Marøy undertook, by contract of September 1987, to serve in the Norwegian UNIFIL force in Lebanon. His period of service was to last from 15 October 1987 to 31 October 1988, and Marøy left for Lebanon immediately. On 1 February 1988, it was decided to repatriate him and he was sent home two days later.

By decision of 28 May 1988, the Akershus Defence District/Fourth Akershus Infantry Regiment dismissed Marøy from the post he held pursuant to the UNIFIL contract. His subsequent appeal was rejected by the Ministry of Defence by decision of 23 June 1988.

Terje Marøy instituted legal proceedings demanding that his dismissal be declared invalid, and he has demanded compensation and redress for wrongful dismissal. Failing that, he has demanded that he should at any rate receive salary for the period up to the delivery of the judgement.

The parties are essentially agreed on the facts of the case. The central events leading to Marøy's dismissal are as follows:

Following several visits to Gaza, Marøy submitted at the turn of the month November/December 1987 a reader's letter to the *Jerusalem Post* and sent two articles to *Dagbladet* (a Norwegian daily). It is not clear if the reader's letter was published. All three pieces attacked Israel for violations of human rights.

Following the outbreak of the Palestinian uprising, the *intifadah*, the UNIFIL headquarters issued an order barring UNIFIL personnel from visiting Gaza. Marøy applied for permission to go there as a journalist. UNIFIL headquarters, to which Marøy had sent the application, replied that they had no objection in regard to Marøy's post as journalist, but that Marøy first had to obtain permission from the commander of the Norwegian UNIFIL force.

Colonel Nils G. Fosland, Acting Commander of the Norwegian UNIFIL force, refused Marøy permission to travel to Gaza to undertake journalistic work. The circumstances are set out in a memorandum of 28 January 1988 from Colonel Fosland to the Norwegian UNIFIL commander, Colonel Strømmen:

"Report on Major Terje Marøy, UNIFIL headquarters, for failure to comply with orders

"1. In the absence of Colonel Wegger Strømmen in the period 13-24 January 1988, the undersigned acted as the Norwegian UNIFIL commander.

"2. On Wednesday 20 January I received a telephone call from Major Terje Marøy, UNFIL headquarters. He informed me of his wish to enter the refugee camps in the Gaza Strip in his off-duty time in order to carry out journalistic work and send reports to the press in Norway. He also informed me that he had obtained permission to do this from ACOS OPS, Colonel Peltier, but that the approval of the Norwegian UNIFIL commander was required for the journey to take place. I informed the Major that working as a journalist in the refugee camps in the Gaza Strip was NOT consistent with the duty of UNIFIL personnel to remain neutral in the conflict. The Major was therefore refused permission to undertake such a journey.

"3. On the evening of Saturday, 23 January 1988, I received a further call from Major Marøy informing me that he had undertaken the journey in keeping with his earlier statement. He had visited two refugee camps. He had done this because he disagreed with my decision, and because he was entitled to spend his off-duty time as he saw fit.

"4. I ordered Major Marøy to present himself to NORCO on Monday, 25 January 1988, to explain his position.

"5. With reference to BFN 52 - 2, annex B (a declaration to be signed by Norwegian United Nations personnel confirming their awareness of various rules of conduct), point 2 and point 3 *a*, I request that the case be investigated."

Marøy has denied that he had gone to Gaza after being refused permission to do so and has also denied that he had said that he had made the journey.

The meeting referred to in the memorandum was held on 28 January 1988. Colonel Strømmen upheld the order he had issued to Marøy. Marøy

was given 24 hours to think through the matter and thereafter wrote the following note addressed to Colonel Strømmen:

"I will not refrain from writing about Israel's occupation of Gaza, and the human rights violations committed there.

"I will in the near future, in a comparative report, view the Israeli conduct in the context of the Nazi conduct in Norway in 1940-1945.

"My position as described yesterday remains unchanged."

Marøy was then repatriated and subsequently dismissed. He has received salary throughout the period of his contract. While it is true that payment of salary was halted for a brief period, neither this fact, nor the grounds for it, have any bearing on the case.

On 31 August 1989, the Oslo City Court delivered judgement in the case with the following conclusion:

"1. Judgement is given in favour of the Norwegian State, represented by the Ministry of Defence.

"2. Costs are not awarded."

Terje Marøy has appealed against the judgement within the prescribed period and has submitted the following final claim:

1. That the decision of the Ministry of Defence of 23 June 1988 be declared wrongful and invalid.

2. That the Norwegian State, represented by the Ministry of Defence, pay compensation to Terje Marøy up to a maximum amount of NKr 342,000.

3. That the Norwegian State, represented by the Ministry of Defence, pay the costs of the case in both courts.

The Norwegian State, i.e., the Attorney-General in the person of Mr. Erik Møse, lawyer, has replied by submitting the following claim:

1. That the judgement of 31 August 1989 of the Oslo City Court be affirmed.

2. That the Norwegian State, represented by the Ministry of Defence, be awarded the costs of the case in the High Court.

The appeal hearing was held in the period 27-29 August 1991. The appellant appeared and explained his position. Five witnesses were examined, of which three were new to the City Court. The court record shows the documents produced in evidence. The details of the case are also evident from the judgement of the City Court and from the statement, reproduced below, of the High Court. Pursuant to the provisions of the Working Environment Act, four lay judges participated in the hearing.

The appellant, Terjé Marøy, asserts in essence the following:

A majority of the City Court has committed an error in its application of the law. Insufficient grounds are given for the dismissal. Moreover, the

Ministry of Defence has committed a procedural error. There are no material objections to the assessment of the evidence.

A minority of the City Court has arrived at a correct conclusion, and in the brief grounds explaining its conclusion it has alighted on the pivotal point in the case. Had Marøy received the information to which he was entitled, the question of dismissal would never have arisen. The very repatriation decision is encumbered with errors. During his off-duty visits to Gaza, Marøy had become aware that Israel had committed a series of human rights violations. He wished to report these violations and thereby contribute to putting a stop to them. He was uncertain how he should go about making such a report and sought information from his superiors. He received no information and therefore wrote two articles for *Dagbladet* and a reader's letter for the *Jerusalem Post*. The latter is unlikely to have been published.

Pursuant to the Fourth Geneva Convention with Additional Protocol, it was incumbent on Marøy to report the injustices, and he was entitled to guidance on how he should proceed. Marøy has cited article 144 of the Fourth Geneva Convention, and articles 85, 86 and 87, paragraphs 1 and 2, of Additional Protocol I. He has also cited section 11 of the Public Administration Act. Norwegian personnel in Lebanon are subject to Norwegian jurisdiction, and the rules of the Norwegian Public Administration Act therefore apply.

This has a bearing on the repatriation decision. Marøy was entitled to be informed that a repatriation decision is in practice irreversible. Had he been so informed, he would have prepared a statement to the repatriating officer, Colonel Strømmen, that was broader in scope and more complete.

True enough, Marøy was ordered not to go to Gaza, and he was also ordered not to write newspaper articles. It is doubtful whether Colonel Fosland, who issued these orders, was entitled to do so. Marøy went to Gaza in his off-duty time, and the newspaper articles were written in his off-duty time. In all events, Marøy would have proceeded differently had he been told that a repatriation decision was in practice irreversible. His main concern was to bring the human rights violations he had learned of to the attention of the appropriate authorities.

The decision to repatriate him is also unreasonable. It is not the intention that any and all breaches of duties and rules should result in repatriation. Moreover, what are to be deemed sufficient grounds for repatriation in a given case must be evaluated against the background of the prevailing repatriation practice. There is no doubt that a number of officers have committed breaches of discipline, some of them serious, without incurring repatriation. Cases of drunken driving are cited.

Moroever, IR4's dismissal decision is encumbered with procedural errors. Marøy was entitled to negotiate the matter before any decision was taken. True enough, a meeting was held, but this did not involve substantive negotiation. It was simply a meeting at which Marøy explained his view. No overtures were made.

The Ministry of Defence decision on the appeal is also encumbered with procedural errors. It is clear from the Ministry's decision that the Ministry's choice of emphasis differed from that of IR4. The Ministry has attached crucial importance to Marøy's acts in the period 20-29 January 1989. Had Marøy been told this in advance he could have drawn attention to circumstances which would have made the Ministry realize that he had done nothing in this period to warrant dismissal.

Thus it is not correct that Marøy had been in Gaza against orders. Lieutenant-Colonel Fosland's memorandum is incorrect in this respect. Rather, Marøy's desire to go to Gaza and report his experiences to newspapers was rooted in a wish to prompt a dialogue on how he could bring the injustices to the attention of the pertinent authorities.

The injustices were of such a nature that they overshadow all other aspects of the case. It was absolutely necessary to bring to light these injustices so that they could be brought to an end. Protection of lives was at issue, including the lives of women and children.

The dismissal has had major financial repercussions for Terje Marøy. As a result of his dismissal he was out of work up to 27 August 1990. Given the currently very tight labour market, it is very difficult for dismissed employees to obtain employment. He is therefore entitled to receive salary for his period of unemployment. He is in receipt of salary for the period to 31 October 1988. In addition to salary he claims compensation for injury to his reputation and other harm of a non-economic nature. These items combined constitute the sum of his claim.

Under any circumstances he is entitled to receive salary covering the duration of the case, as provided in section 19 of the Civil Service Act. This claim is limited to the period in which he was out of work.

Counsel for the respondent, i.e. the Norwegian State represented by the Ministry of Defence, has essentially taken his stand on the judgement of the City Court which is considered to be correct in its conclusion and essentially in its grounds. The advocate calls attention above all to the following:

The case concerns the Ministry of Defence decision of 23 June 1988, i.e., neither the decision to repatriate Marøy nor IR4's decision to dismiss him.

The repatriation decision is a United Nations decision whose validity cannot be contested in Norwegian courts of law. Furthermore, it was made on grounds of fact and the administrative procedure was sound.

IR4's decision was the subject of an appeal and in such a case it is only the decision of the administrative appeal body that can be tested by submission to a court.

The competence of the courts of law is limited to the extent that only the legality of the decision may be tested and not the administrative appeal body's assessment of the case. Attention is drawn to *Norwegian Supreme Court Reports 1982*, p. 1729, and ibid., *1988*, p. 664.

The Ministry of Defence decision to dismiss Marøy was in pursuance of section 15 of the Civil Service Act. Marøy had acted improperly and had breached the confidence that is required.

The decision is not encumbered with procedural errors. The Ministry of Defence position is based exclusively on the content of the documents of the case, with which Marøy was well acquainted. It is not claimed that the Ministry of Defence position is based on errors of fact. No procedural error is implied by the fact that the Ministry's choice of emphasis differed somewhat from that of IR4. Marøy was not entitled to be notified of this in advance.

Furthermore, Marøy adduced no reasons or excuse of relevance to the case when he refused to obey orders and announced his intention to go ahead with an activity which had been expressly prohibited.

There has been no unlawful act or omission on the part of any Norwegian or, for that matter, United Nations agency.

Marøy has received the guidance to which he was entitled to the extent that he requested such guidance. It is not correct that Marøy asked how he should go about reporting occurrences that he may have observed or been apprised of by other means. Moreover, it is in itself improbable that an officer with the rank of major would be unfamiliar with the reporting routine. In any event, Marøy's superiors have not construed his approach as a request for guidance on how he should report matters he considered to be of importance.

For the sake of completeness it should be pointed out that no significance can be attached to any error that may have been committed in this respect.

It is not correct that Marøy was obliged under international law to undertake the acts from which he was ordered to abstain by his superiors.

As regards the claim for compensation, the Norwegian State has pointed out that Marøy has received salary up to the date on which his contract expired. He is not entitled to any additonal salary. Reference is made to section 7 of the Civil Service Act.

The High Court has arrived at the same conclusions as the City Court and has the following comments:

As pointed out by the Ministry of Defence, the case concerns the legality of the Ministry's decision of 23 June 1988 whereby Marøy's appeal was rejected and his dismissal accordingly affirmed. The courts of law can try the legality of the decision, i.e., the assessment of evidence, the procedure employed and the application of the law. The administrative appeal body's assessment of the case cannot be reviewed.

The High Court finds that no procedural errors encumber the decision of the Ministry of Defence, and cites the arguments adduced by the Norwegian State which are endorsed by the court.

The Court finds that Marøy's acts in the period 20 to 29 January 1988 were of such nature as to warrant his dismissal pursuant to section 15 of the Civil Service Act.

After the production of evidence at the appeal hearing, the High Court finds it to be established that Marøy, in a telephone conversation with Colonel Fosland on 23 January 1988, said that the journey to Gaza had been carried out. It is not necessary to decide whether Marøy really had gone to Gaza in contravention of the order issued to him. The Court would, however, remark that it is incomprehensible why Marøy should say that he had gone to Gaza if he had not done so.

The order issued to Marøy not to go to Gaza and to cease the journalistic activity he had commenced had an objective basis. His articles were polemical and emotional. They did not refer to personal experience. UNIFIL considered them detrimental to UNIFIL's activity in Lebanon, an assessment which the Court considers to be objective. As far as the Court can understand, UNIFIL personnel were prohibited from going to Gaza on security grounds. There was no reason why this prohibition should not apply to Marøy too.

The order was clear and unambiguous. Marøy was given 24 hours to think the matter through, after which he gave written notification that he would act in contravention of the order.

Accordingly the Court finds that there is no basis for holding the decision of the Ministry of Defence to be invalid. For the sake of completeness, and regard being had to Marøy's vigorous argument, the court adds:

Marøy was not obliged pursuant to any human rights provision to write the articles he wrote. Nor was he under any obligation to report the matters about which he had been told. That he could have submitted a report through the official channels is another matter, in the event he did not do so.

Furthermore, the Court is unable to go along with Marøy's contention that his primary wish was to ascertain how he should go about reporting human rights violations. Neither of his superiors—Colonel Strømmen and Colonel Fosland—had been given to understand that Marøy requested guidance on the procedure for reporting. The only written material cited in the case is Marøy's letter of 10 January 1987 to the Legal Affairs Department of the Norwegian Ministry of Foreign Affairs, the military prosecutor and the Norwegian UNIFIL force commander, Colonel W. Strømmen. This letter does not come across as a request to be told the procedure for reporting. At all events the recipients of the letter have not construed this to be what Marøy was requesting. Marøy could be in no doubt that the recipients—in the first instance Colonel Strømmen—had not construed the letter as an inquiry about reporting channels. If this was the question to which Marøy desired a reply, it should have been a simple matter for him to put the question clearly.

Accordingly, judgement must be found in favour of the Norwegian State, represented by the Ministry of Defence, in regard to the demand

that the dismissal be declared wrongful and invalid and in regard to the claim for compensation based on wrongful dismissal.

Furthermore, the Court finds that under section 19 of the Civil Service Act Marøy has no further claim to salary than what he has already received. He has received salary up to 31 October 1988, i.e., up to the expiry of his contract. He is entitled to this and no more; cf. section 7 of the Civil Service Act. Section 19 of the Civil Service Act merely states that complaints and lawsuits have suspensive effect, but does not state that a civil servant is entitled, irrespective of other legal relationships, to salary as long as the case is pendent.

Accordingly, the judgement of the City Court must be affirmed. The Norwegian State has submitted no claim to the effect that it should be awarded the costs of the case in the City Court. The appeal has been unsuccessful, and pursuant to the main rule set out in section 180, first paragraph, of the Civil Procedure Act, the appellant is ordered to pay the costs of the case in the High Court. The costs are set at NKr 25,000 in accordance with the statement submitted.

The judgement is unanimous.

CONCLUSION OF THE JUDGEMENT

1. The judgement of the City Court is affirmed.

2. Terje Marøy is ordered to pay the costs of the case in the High Court, totalling 25,000—twenty-five thousand—kroner, to the Norwegian State within 2—two—weeks of the service of the judgement.

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2. Sweden

SUPREME ADMINISTRATIVE COURT

APPEAL AGAINST THE JUDGEMENT OF THE FIRST INSTANCE
JUDGEMENT OF 13 NOVEMBER 1991

Request of a member of UNIFIL concerning his relief from taxation—Alleged higher cost of living of the applicant during his service with the United Nations—Question whether the applicant suffered an increase of personal living costs

A BRIEF SUMMARY[1]

In a judgement of 22 October 1990, the Country Administrative Court (Länsrätten) in Mariestad rejected the claim of Mr. L. Weghagen, who had served with the United Nations Interim Force in Lebanon, concerning relief from taxation owing to higher costs of living during his service with the United Nations.

On 8 February 1991, the Administrative Court (Kammarrätten) in Gothenburg upheld the judgement of the court of first instance. The appli-

cant applied for leave to appeal to the Supreme Administrative Court. Leave was refused on 13 November 1991. Consequently the judgement of first instance stands.

Facts:

Mr. L. Weghagen from Skövde, Sweden, served with the United Nations Interim Force in Lebanon during the taxation year of 1989. Owing to the fact that Mrs. Weghagen was resident in Israel during four months of the time when Mr. Weghagen was stationed in Lebanon, Mr. Weghagen was forced to pay for the upkeep of two households, an apartment in Israel and an apartment in Sweden.

The County Administrative Court considered Mr. Weghagen's alleged higher costs of living in the light of the fact that he, during his service, enjoyed both free food and accommodation through the United Nations. Furthermore, 20 per cent of the per diem allowance paid by the Swedish Government was exempt from taxation.

Owing to these facts, Mr. Weghagen could not be considered as having suffered an increase of personal living costs. The costs resulting from his wife's residence in Israel must be considered as personal, but not deductible costs.

NOTE

[1] Submitted by the Permanent Mission of Sweden to the United Nations.

Part Four

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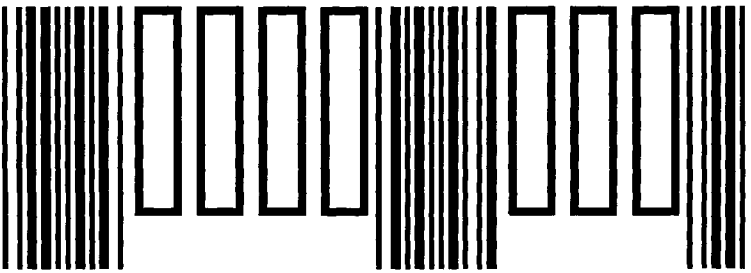

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