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CONTENTS

PEACEKEEPING

PERSONNEL ISSUES

PRIVILEGES AND IMMUNITIES

C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

FOREWORD

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

Chapters I and II of the present volume — the thirty-first 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 1994. Decisions given in 1994 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 be included in 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 1994.

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

ABBREVIATIONS

ECE	Economic Commission for Europe
ESCAP	Economic and Social Commission for Asia and the Pacific
FAO	Food and Agriculture Organization of the United Nations
FICSA	Federation of International Civil Servants' Associations
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICC	International Chamber of Commerce
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICSID	International Centre for Settlement of Investment Disputes
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
INSTRA	International Research and Training Institute for the Advancement of Women
ITU	International Telecommunication Union
MIGA	Multilateral Investment Guarantee Agency
UNCHS	United Nations Center for Human Settlements (Habitat)
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNEF	United Nations Emergency Force
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDIR	United Nations Institute for Disarmament Research
UNIDO	United Nations Industrial Development Organization
UNIIMOG	United Nations Iran-Iraq Military Observer Group
UNITAR	United Nations Institute for Training and Research
UNRWA	United Nations Relief and Work Agency for Palestine Refugees in the Near East
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

1. Norway

NOTE VERBALE DATED 16 NOVEMBER 1995 FROM THE PERMANENT MISSION OF NORWAY TO THE UNITED NATIONS

In paragraph 1 of the Law of 19 June 1947 No. 5 about privileges and immunities for international organizations, a new third subsection has been added with the following wording:

"When special and weighty foreign policy considerations so indicate, the King may, notwithstanding Norwegian law and independently of international agreements, grant immunities and privileges to a foreign or international organization or institution, etc., its officials and other persons acting on its behalf, as well as to delegations, delegates and representatives who take part in its activities".

2. Peru

SUPREME DECREE NO. 37-94-EF [1, 2]

REGULATING THE APPLICATION OF THE TAX CONCESSION AND INVOLVING THE REFUND OF TAXES PAID BY DIPLOMATIC MISSIONS, CONSULAR OFFICES AND INTERNATIONAL ORGANIZATIONS AND AGENCIES ACCREDITED TO THE COUNTRY

THE PRESIDENT OF THE REPUBLIC

CONSIDERING THAT

Article 4 of Legislative Decree No. 783 stipulates that the general sales tax and the municipal development tax paid by diplomatic missions, consular offices and international organizations and agencies accredited to the country on telephone, telex and telegraph services, electricity and drinking-water supply and on the purchase of tickets for officials travelling abroad on official business may be refunded.

Likewise, article 5 of Legislative Decree No. 783 stipulates that goods imported by the above-mentioned institutions and their members shall be exempt from the general sales tax, the municipal development tax and the selective tax on consumption, provided that the goods are imported duty-free in accordance with the laws in force, up to the amount and within the time-limit specified therein,

It is advisable to enact regulations to permit the correct application of the above-mentioned concessions,

In accordance with article 118, paragraph 8, of the Political Constitution of Peru,

HEREBY DECREES:

Article 1. When the text of these regulations uses the term "Legislative Decree", without identifying letters or numbers, and the term "taxes", it shall be understood to refer to Legislative Decree No. 783 and to the general sales tax and municipal development tax, respectively.

Similarly, when articles are mentioned without an indication of the relevant law or regulation, they shall be understood to be articles of these regulations.

Article 2. The beneficiaries of the concession established in article 4 of the Legislative Decree shall be diplomatic missions, consular offices and international organizations and agencies. For that purpose:

(*a*) "Diplomatic missions" shall mean the permanent representation of a State in Peru through designated embassies, nunciatures and other missions of similar ranks.

Official cooperation agencies belonging to the accrediting State shall form part of the diplomatic mission, provided that they are recognized by the Ministry of Foreign Affairs, as shall the offices of attachés;

(*b*) "Consular offices" shall mean the representation of a State in Peru, within its sphere of jurisdiction and for the functions within its competence, through a designated consulate-general, consulate, vice-consulate or consular agency;

(*c*) "International organizations and agencies" shall mean the United Nations and its organizations and agencies and regional and subregional agencies established on the initiative of a group of States and duly accredited to the Peruvian State.

Article 3. For the purposes of the second paragraph of article 4 of the Legislative Decree, the following shall be deemed to be officials:

(*a*) Heads of mission with the rank ambassador, nuncio, minister plenipotentiary, chargé d'affaires with cabinet rank and resident representative of an international organization or agency;

(*b*) Diplomatic officials with the rank of minister, minister counsellor, counsellor, first secretary, second secretary and third secretary, attachés and deputy attachés at missions with diplomatic status, and officials of international agencies and organizations;

(*c*) Career consular officials with the rank of consul general, consul, [Protocol] deputy consul and vice-consul;

(*d*) Relatives and dependents who are members of the household of heads of mission, diplomatic officials, representatives and officials of international organizations or agencies and career consular officials.

TAX REFUNDS

Article 4. Taxes paid by beneficiaries of the concession on telephone, telex and telegraph services, electricity and drinking water supplies, as shown on the corresponding invoices, may be refunded. Taxes levied on the purchase of tickets for official travel abroad, which have been paid for out of the funds of the above-mentioned bodies, may also, when accompanied by the corresponding receipts, be refunded.

Article 5. Taxes paid on telephone, telex and telegraph services, electricity and drinking water supply, where substantiated by the corresponding invoices, shall be refunded, provided that such services and supplies have been previously registered with the Ministry of Foreign Affairs in the name of the beneficiary who is applying for the refund.

Beneficiaries of the concession shall inform the Ministry of Foreign Affairs of any cancellation or change in such services or supplies, in order to ensure that they cease to be considered for a refund.

Article 6. The Ministry of Foreign Affairs shall keep the Ministry of the Economy and Finance up to date regarding the list of diplomatic missions, consular offices and international organizations and agencies.

Article 7. The refund of the specific taxes levied on services, supplies and tickets for travel abroad shall be effected through negotiable letters of credit.

After 15 May 1994 beneficiaries of the concession may request the redemption of the negotiable letters of credit, which shall take effect within a period of two (2) working days from the date of their issue by the Superintendencia Nacional de Administración Tributaria (SUNAT).

Article 8. Applications for a refund may be submitted within six (6) months of the payment of services, supplies or tickets for travel abroad, provided that they are substantiated by the corresponding receipts. Applications shall be processed in relation to the monthly period covered.

The minimum amount for which a refund may be requested shall be the equivalent of 0.25 of a unit of taxation.

Article 9. In order to obtain a refund, beneficiaries of the concession must attach a certificate issued by the Ministry of Foreign Affairs attesting that information relating to them, their officials, supplies and services is registered with the Ministry.

At the time of issuing the certificate referred to in the preceding paragraph, the Ministry of Foreign Affairs shall supply the Ministry of the Economy and Finance with a copy of the certificates issued to beneficiaries.

The legal representative of the beneficiary may designate a representative, whose name shall be indicated in the appropriate space on the certificate. Such representative shall attach a copy of his identity document and that of the person represented, certified by the public authenticating officer of SUNAT.

Article 10. Beneficiaries shall request the relevant Office of the Provincial Governor to issue negotiable letters of credit, indicating the number and amount of such letters. The request shall be accompanied by the following documents:

(*a*) A detailed list of all payment receipts corresponding to the period for which a refund is being requested, indicating the taxpayer number of the issues, the series, number and date of each receipt and the total amount of tax charged;

(*b*) A photocopy, certified by the SUNAT public authenticating officer, of cancelled invoices for telephone, telex and telegraph services, electricity and drinking water supply;

(*c*) With regard to used tickets for travel abroad, a copy of the receipt or the ticket, certified by the SUNAT public authenticating officer, must be submitted, indicating the number and name of the user.

Article 11. SUNAT shall issue the negotiable letters of credit and shall provide them to the beneficiary within five (5) working days following the date on which the beneficiary submitted the application fulfilled the necessary requirements.

The regulations governing negotiable letters of credit shall be applicable in the matter, provided that they do not conflict with the provisions of this Supreme Decree.

Article 12. At the time of issuing the negotiable letters of credit, SUNAT shall inform the Treasury Office of the Ministry of the Economy and Finance of the quantity and amount of the negotiable letters of credit issued to each diplomatic mission, consular office or international organization or agency.

Article 13. Any false or fraudulent information provided by the applicant shall give rise to the penalties provided by law, convention or agreement.

Imports

Article 14. In accordance with the principle of reciprocity, where appropriate, the exemption from the general sales tax, the municipal development tax and the selective tax on consumption, referred to in article 5 of the Legislative Decree in force since 1 January 1994 shall apply to movable property imported for official use by diplomatic missions, consular offices and international organizations and agencies, as well as to movable property imported for the personal use of diplomatic agents, officials, experts, technical and administrative staff and other personnel, in accordance with the provisions of Legislative Decrees Nos. 550 and 551, Supreme Decree No. 033-91-EF and the bilateral agreements concluded prior to the issue of Legislative Decree No. 783; the conditions, characteristics, maximum amounts and periods specified therein shall apply.

Article 15. The National Customs Office shall accept the relevant tax exemptions on the basis of exemption decrees issued by the Ministry of Foreign Affairs. Upon such issuance, the Customs Office shall supply the Ministry of the Economy and Finance with a copy of the relevant tax exemptions.

Transitional and final provisions

1. The concession granted by article 4 of Legislative Decree No. 783 shall be applicable to receipts cancelled on or after 1 January 1994.

2. Until the new regulations governing negotiable letters of credit are adopted by supreme decree in accordance with article 39 of the Tax Code, SUNAT may determine the procedures necessary for the issue of such letters, subject to the approval of the Ministry of the Economy and Finance.

3. This Supreme Decree shall be countersigned by the President of the Council of Ministers and Minister for Foreign Affairs and by the Minister for the Economy and Finance.

Done at Government House, Lima, on 6 April 1994.

Alberto Fujimori Fujimori
Constitutional President of the Republic

3. Sweden

NOTE VERBALE DATED 29 FEBRUARY 1994 FROM THE PERMANENT MISSION OF SWEDEN TO THE UNITED NATIONS

The Swedish Parliament in 1994 enacted two amendments to the Act on Immunity and Privilege in Certain Cases (1976:661), by which to the list of persons to whom the Act shall apply has been added:

The Organization for the Prohibition of Chemical Weapons:

— Member States' representatives to the Organization, persons serving with the Organization or entrusted with assignments by the organization and observers in connection with inspections.

The International Tribunal for the Former Yugoslavia:

— Judges, the Prosecutor and his staff, the Registrar and his staff and persons serving in other ways at the Tribunal.

NOTES

[1]Published in the *Normas Legales* on 31 December 1993, 122235.

[2]Translation prepared by the Secretariat of the United Nations.

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

No State acceded or succeeded to the Convention in 1994. There are 135 States parties to the Convention.[2]

2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Agreement between the United Nations and the Government of Cameroon concerning the United Nations Information Centre for Cameroon, Gabon and the Central African Republic in Yaoundé.[3] Signed at Yaoundé on 8 March 1994.

Article I

DEFINITION

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

Article II

FUNCTIONS OF THE CENTRE

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

Article III

STATUS OF THE CENTRE

1. The premises of the Centre and 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 archives, assets and properties of the Centre as well as its official correspondence shall be inviolable.

Article IV

FACILITIES AND SERVICES

1. The Government shall provide free of cost the Centre with buildings for use as offices and the Centre shall ensure the maintenance and replacement of equipment.

2. The Government shall contribute its agreed quota to the running costs of the Centre. Such Contributions made in accordance with the provision of this section shall be paid by the Government and managed by the United Nations, exclusively to the benefit of the Centre in Yaoundé.

3. The appropriate Cameroon authorities shall make every possible effort to secure, upon 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 processes 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 Cameroon;

(*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 two motor vehicles, intended for personal use free of duty when they come to reside in Cameroon, which privileges shall be valid for a period of six months from the date of arrival in Cameroon. Sale or free disposal of such articles shall be governed by regulations in force in Cameroon.

2. Officials of the Centre shall furthermore enjoy the following privileges and immunities:

(*a*) Have the right to import and to purchase locally free of custom and excise duties limited quantities of certain articles intended for personal consumption in accordance with Government regulations;

(*b*) Have the right to import two motor vehicles free of customs and excise duties, including value added taxes in accordance with Government regulations applicable to international organizations based in Cameroon.

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, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys of comparable rank. His name shall be included in the list of international organizations and offices in Yaoundé issued by the Cameroon Ministry of External Relations.

His spouse and minor children will enjoy the same privileges, immunities, exemptions and facilities, except in cases where the persons concerned carry out activities incompatible with the functions of the Director and the Centre's mission.

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.

(*b*) Agreement between the United Nations and the Government of the Netherlands concerning the headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.[4] signed at New York on 29 July 1994.

The United Nations and the Kingdom of the Netherlands,

Whereas the Security Council acting under Chapter VII of the Charter of the United Nations decided, by paragraph 1 of its resolution 808 (1993) of 22 February 1993, *inter alia*, "that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991";

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

Whereas the Security Council, in paragraph 6 of its resolution 827(1993) of 25 May 1993 further, *inter alia*, decided that "the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council";

Whereas the Statute of the International Tribunal in its article 31, provides that "the International Tribunal shall have its seat at The Hague";

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

Have agreed as follows:

Article I

Definitions

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

(*a*) "the Tribunal" means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by the Security Council pursuant to its resolutions 808(1993) and 827(1993);

(*b*) "the premises of the Tribunal" means buildings, parts of buildings and areas, including installations and facilities made available to, maintained, occupied or used by the Tribunal in the host country in connection with its functions and purposes;

(*c*) "the host country" means the Kingdom of the Netherlands;

(*d*) "the government" means the Government of the Kingdom of the Netherlands;

(*e*) "the United Nations" means the United Nations, an international governmental organization established under the Charter of the United Nations;

(*f*) "the Security-Council" means the Security Council of the United Nations;

(*g*) "the Secretary-General" means the Secretary-General of the United Nations;

(*h*) "the competent authorities" means national, provincial, municipal and other competent authorities under the law of the host country;

(*i*) "the Statute" means the Statute of the Tribunal adopted by the Security Council by its resolution 827(1993);

(*j*) "the Judges" means the Judges of the Tribunal as elected by the General Assembly of the United Nations pursuant to article 13 of the Statute;

(*k*) "the President" means the President of the Tribunal as referred to in article 14 of the Statute;

(*l*) "the Prosecutor" means the Prosecutor of the Tribunal as appointed by the Security Council pursuant to article 16 of the Statute;

(*m*) "the Registrar" means the Registrar of the Tribunal as appointed by the Secretary-General pursuant to article 17 of the Statute;

(*n*) "the officials of the Tribunal" means the staff of the Office of the Prosecutor as referred to in paragraph 5 of article 16 of the Statute and the staff of the Registry as referred to in paragraph 4 of article 17 of the Statute

(*o*) "persons performing missions for the Tribunal" means persons performing certain missions for the Tribunal in the investigation or prosecution or in the judicial or appellate proceedings;

(*p*) "the witnesses" means persons referred to as such in the Statue;

(*q*) "experts" means persons called at the instance of the Tribunal, the Prosecutor, the suspect or the accused to present testimony based on knowledge, skills, experience or training;

(*r*) "counsel" means a person referred to as such in the Statute;

(*s*) "the suspect" means a person referred to as such in the Statute;

(*t*) "the accused" means a person referred to as such in the Statute;

(*u*) "the General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the Kingdom of the Netherlands acceded on 19 April 1948;

(*v*) "the Vienna Convention" means the Vienna Convention on Diplomatic Relations[5], done at Vienna on 18 April 1961, to which the Kingdom of the Netherlands acceded on 7 September 1984;

(*w*) "the regulations" means the regulations adopted by the Tribunal pursuant to article VI, paragraph 3, of this Agreement.

Article II

Purpose and scope of the Agreement

This agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Tribunal in the Kingdom of the Netherlands.

Article III

Juridical personality of the Tribunal

1. The Tribunal shall possess in the host country full juridical personality. This shall, in particular, include the capacity:

(*a*) To contract;

(*b*) To acquire and dispose of movable and immovable property;

(*c*) To institute legal proceedings.

2. For the purpose of this article the Tribunal shall be represented by the Registrar.

Article IV

Application of the General and Vienna Conventions

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

Article V

Inviolability of the premises of the Tribunal

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

2. The competent authorities shall not enter the premises of the Tribunal to perform any official duty, except with the express consent, or at the request of, the Registrar or an official designated by him. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises of the Tribunal except with the consent of and in accordance with conditions approved by the Registrar.

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

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

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

Article VI

Law and authority on the premises of the Tribunal

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

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

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

4. Any dispute between the Tribunal and the host country, as to whether a regulation of the Tribunal is authorized by this Article, or as to whether a law or regulation of the host country is inconsistent with any regulation of the Tribunal authorized by this Article, shall be promptly settled by the procedure set out in Ar-

ticle XXVIII, paragraph 2 of this Agreement. Pending such settlement, the regulation of the Tribunal shall apply and the law or regulation of the host country shall be inapplicable on the premises of the Tribunal to the extent that the Tribunal claims it to be inconsistent with its regulation.

Article VII

PROTECTION OF THE PREMISES OF THE TRIBUNAL AND THEIR VICINITY

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

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

Article VIII

FUNDS, ASSETS AND OTHER PROPERTY

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

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

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

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

Article IX

INVIOLABILITY OF ARCHIVES AND ALL DOCUMENTS OF THE TRIBUNAL

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

Article X

EXEMPTION FROM TAXES AND DUTIES

1. Within the scope of its official functions, the Tribunal, its assets, income and other property shall be exempt from all direct taxes, which include, *inter alia*, income tax, capital tax, corporation tax as well as direct taxes levied by local and provincial authorities.

2. The Tribunal shall:

(*a*) On application be granted exemption from motor-vehicle tax in respect of motor-vehicles used for its official activities;

(*b*) Be exempt from stock exchange tax, insurance tax, tax on capital duty and real property transfer tax;

(*c*) Be exempt from all import duties and taxes in respect of goods, including publications and motor-vehicles, whose import or export by the Tribunal is necessary for the exercise of its official activities;

(*d*) Be exempt from value-added tax paid on any goods, including motor-vehicles, or services of substantial value, which are necessary for its official activities. Such claims for exemption will be made only in respect of goods or services supplied on a recurring basis or involving considerable expenditure;

(*e*) Be exempt from excise duty included in the price of alcoholic beverages, tobacco products and hydrocarbons such as fuel oils and motor fuels purchased by the Tribunal and necessary for its official activities;

(*f*) Be exempt from the tax on private passenger vehicles and motorcycles (*Belasting van personenauto's en motorrijwielen, BPM*) with respect to motor vehicles for its official activities.

3. The exemptions provided for in paragraph 2(d) and (e) above may be granted by way of a refund. The exemptions referred to in paragraph 2 above shall be applied in accordance with the formal requirements of the host country. These requirements, however, shall not affect the general principles laid down in this Article.

4. The provisions of this article shall not apply to taxes and duties which are considered to be charges for public utility services, provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

5. Goods acquired or imported under paragraph 2 above shall not be sold, given away, or otherwise disposed of, except in accordance with conditions agreed upon with the Government.

Article XI

Communications facilities

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

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

3. The Tribunal shall have the right to operate radio and other telecommunications equipment on United Nations registered frequencies and those allocated to it by the Government, between the Tribunal offices, installations, facilities and means of transport, within and outside the host country, and in particular with the International Court of Justice in The Hague, United Nations Headquarters in New York, United Nations Offices in Vienna and Geneva and the territory of the former Yugoslavia.

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

Article XII

PUBLIC SERVICES FOR THE PREMISES OF THE TRIBUNAL

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

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

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

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

Article XIII

FLAG, EMBLEM AND MARKINGS

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

Article XIV

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

1. The Judges, the Prosecutor and the Registrar shall, together with members of their families forming part of their household and who do not have Netherlands nationality or permanent residence status in the host country, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents, in accor-

dance with international law and in particular under the General Convention and the Vienna Convention. They shall, *inter alia*, enjoy:

(*a*) Personal inviolability, including immunity from arrest or detention;

(*b*) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna convention;

(*c*) Inviolability for all papers and documents;

(*d*) Exemption from immigration restrictions, alien registration or national service obligations;

(*e*) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(*f*) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

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

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

Article XV

Privileges and immunities of officials of the Tribunal

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

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

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

(*c*) Enjoy immunity from national service obligations;

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

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

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

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

2. Internationally recruited staff at the P-5 level and above who do not have Netherlands nationality or permanent resident status in the host country shall, together with members of their families forming part of their household who do not have Netherlands nationality or permanent residence status in the host country, be accorded the privileges, immunities and facilities as are accorded to members of comparable rank of the diplomatic staff of missions accredited to the Government.

3. Internationally recruited staff shall also be entitled to export with relief from duties and taxes, on the termination of their function in the host country, their furniture and personal effects, including motor vehicles.

4. In the event that the Tribunal operates a system for the payments of pensions and annuities to former officials of the Tribunal and their dependants, exemption from income tax in the host country shall not apply to such pensions and annuities.

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

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

Article XVI

Personnel recruited locally and assigned to hourly rates

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

Article XVII

Persons performing missions for the Tribunal

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

2. The right and the duty to waive the immunity referred to in paragraph 1 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the President of the Tribunal.

Article XVIII

WITNESSES AND EXPERTS APPEARING BEFORE THE TRIBUNAL

1. Without prejudice to the obligation of the host country to comply with request for its assistance made, or orders issued by, the Tribunal pursuant to article 29 of its Statute, witnesses and experts appearing from outside the host country on a summons or a request of the Tribunal or the Prosecutor shall not be prosecuted or detained or subjected to any other restriction of their liberty by the authorities of the host country in respect of acts or convictions prior to their entry into the territory of the host country.

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

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

Article XIX

COUNSEL

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

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

(*a*) Exemption from immigration restrictions;

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

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

3. This article shall be without prejudice to such disciplinary rules as may be applicable to the counsel.

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

Article XX

THE SUSPECT OR ACCUSED

1. The host country shall not exercise its criminal jurisdiction over persons present in its territory, who are to be or have been transferred as a suspect or an

accused to the premises of the Tribunal pursuant to a request or an order of the Tribunal, in respect of acts, omissions or convictions prior to their entry into the territory of the host country.

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

Article XXI

Cooperation with the competent authorities

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

2. The Tribunal shall cooperate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

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

Article XXII

Notification

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

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

Article XXIII

Entry into, exit from and movement within the host country

All persons referred to in articles XIV, XV, XVII, XVIII and XIX of this Agreement as notified as such by the Registrar to the Government shall have the right of unimpeded entry into, exit from and movement within the host country, as appropriate and for the purposes of the Tribunal. They shall be granted facilities for speedy travel. Visas, entry permits or licences, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses who have been notified as such by the Registrar to the Government.

Article XXIV

UNITED NATIONS LAISSEZ-PASSER AND CERTIFICATE

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

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

Article XXV

IDENTIFICATION CARDS

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

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

Article XXVI

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

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

Article XXVII

SOCIAL SECURITY AND PENSION FUND

1. Officials of the Tribunal are subject to the United Nations Staff Regulations and Rules and, if they have an appointment of six months' duration or more, become participants in the United Nations Pension Fund. Accordingly, such officials shall be exempt from all compulsory contributions to the Netherlands social security organizations. Consequently, they shall not be covered against the risks described in the Netherlands social security regulations.

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

Article XXVIII

SETTLEMENT OF DISPUTES

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

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

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

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

Article XXIX

FINAL PROVISIONS

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

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

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

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

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

6. With respect to the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe only.

(*c*) Exchange of letters constituting an agreement between the United Nations and the Government of the former Yugoslav Republic of Macedonia on the status of the United Nations Protection Force in the former Yugoslav Republic of Macedonia.[6] Skopje, 1 and 14 June 1994

I

LETTER FROM THE MINISTER OF FOREIGN RELATIONS OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

14 June 1994

Acknowledging receipt of your letter of 1 June 1994 it is my honour to inform you that the Government of the Republic of Macedonia, recalling the Declaration of the Assembly of the Republic of Macedonia of 19 December 1991 which welcomes and supports the efforts of the United Nations aimed at peaceful settlement of the Yugoslav crisis, including the deployment of peace forces of the United Nations, further recalling the initiative of the President of the Republic of Macedonia to the Secretary-General of the United Nations in respect of the deployment of the United Nations peace forces in the Republic of Macedonia of 11 November 1992, the letter of the President of the Government of the Republic of Macedonia with regard to resolution 795(1992) addressed to the United Nation Secretary-General on 22 December 1992 and the reply of the Minister of Defence of the Republic of Macedonia of 30 December 1992 to the letter of the Commander of UNPROFOR for the former Yugoslavia of 23 December 1992 concerning the status of the United Nations Protection Force (UNPROFOR), agrees with the enclosed text of the Memorandum of Understanding regulating the status, facilities, immunities and privileges of the United Nations Protection Forces (UNPROFOR) and of its members while staying in the Republic of Macedonia.

The Government of the Republic of Macedonia also agrees that the Memorandum of Understanding, your letter of 1 June 1994 addressed to me, as well as this letter of mine constitute the Agreement between the Republic of Macedonia and the United Nations.

(*Signed*) Stevo CRVENKOVSKI
Minister for Foreign Relations

II

LETTER FROM THE UNITED NATIONS

6 March 1995

I have the honour to refer to my letter to you dated 1 June 1994 in which, in order to facilitate the fulfillment of the mandate of the United Nations Protection Force (UNPROFOR), I proposed that the status of UNPROFOR and its personnel while in your country be regulated by the terms and conditions set forth in a Memorandum of Understanding that was enclosed with that letter. A copy of my letter with the Memorandum of Understanding is enclosed herewith.

I also have the honour to refer to your letter dated 14 June 1994, informing me that your Government agrees with the text of the Memorandum of Understanding. A signed copy of an English language version of that letter is also enclosed herewith.

I should like to inform you that the United Nations considers that the exchange of letters referred to above constitutes an agreement between the United Nations and the Government and that, accordingly, the status of UNPROFOR and its personnel in your country will be governed by the terms and conditions set forth in the Memorandum of Understanding.

(*Signed*) Yasushi AKASHI
Special Representative of the Secretary-General for the Former Yugoslavia

Memorandum of Understanding

I. DEFINITION

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

(*a*) "UNPROFOR" means the United Nations Protection Force established pursuant to Security Council resolution 743 (1992) of 21 February 1992. UNPROFOR has been further extended pursuant to Security Council resolution 795 (1992) of 11 December 1992, as recommended by the Secretary-General in his report dated 9 December 1992 (S/24923). As such, UNPROFOR has been expanded pursuant to Security Council resolution 842 (1993) of 18 June 1993. UNPROFOR consists of:

(i) The "Special Representative" appointed by the Secretary-General of the United Nations with the consent of the Security Council. Any reference to the Special Representative in this MOU shall, except in paragraph 24, include any member of UNPROFOR to whom he delegates a specified function or authority;

(ii) a "military component" consisting of military and civilian personnel made available by participating States at the request of the Secretary-General;

(iii) a "police component" consisting of police personnel made available by participating States at the request of the Secretary-General;

(iv) a "civilian component" consisting of officials of the United Nations and civilian personnel made available by participating States at the request of the Secretary-General;

(*b*) "Member of UNPROFOR" means any member of the military, police or civilian components;

(*c*) "Participating State" means a State contributing personnel to the military, police, or civilian components of UNPROFOR;

(*d*) "The Government" means the Government of the State as admitted to membership in the United Nations by the General Assembly further to adoption on 27 April 1993 of resolution 47/225;

(*e*) "The territory" means the territory of the State as admitted to membership in the United Nations by the General Assembly further to the adoption on 27 April 1993 of resolution 47/225;

(*f*) "The Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

II. Application of the present Memorandum of Understanding

2. Unless specifically provided otherwise, the provisions of the present MOU and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNPROFOR or any member thereof shall apply in the territory only.

III. Application of the Convention

3. UNPROFOR, its members, property, funds and assets, shall enjoy the privileges and immunities specified in the present MOU as well as those provided for in the Convention.

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

IV. Status of UNPROFOR

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

6. The government undertakes to respect the exclusively international nature of UNPROFOR.

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

(*a*) The United Nations shall ensure that UNPROFOR shall conduct its operations in the territory with full respect for the principles and spirit of the

general conventions applicable to the conduct of military personnel. These international conventions include the Four Geneva Conventions of 12 August 1949[7] and their Additional Protocols of 8 June 1977[8] and the UNESCO Convention of 14 May 1954 on the Protection of Cultrual Property in the Event of Armed Conflict[9];

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

UNPROFOR and the government shall therefore ensure that members of their respective military personnel are fully acquainted with the principles and spirit of the above-mentioned international instruments.

United Nations flag and vehicle markings

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

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

Communications

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

11. Subject to the provisions of paragraph 10:

(*a*) UNPROFOR shall have authority to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. The telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations and the frequencies on which any such station may be operated shall be decided upon in cooperation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board;

(*b*) UNPROFOR shall enjoy, in the territory, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of UNPROFOR, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The

frequencies on which the radio will operate shall be decided upon in cooperation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be charged at the most favourable rate;

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

Travel and transport

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

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

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

Privileges and immunities of UNPROFOR

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

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

(*b*) To establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of UNPROFOR, but not of locally recruited personnel. Such commissaries may provide goods of a con-

sumable nature and other articles to be specified in advance. The Specials Representative shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than members of UNPROFOR, and he shall give sympathetic consideration to observations or request of the Government concerning the operation of the commissaries;

(*c*) To clear ex customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNPROFOR or for resale in the commissaries provided for above;

(*d*) To re-export or otherwise dispose of such equipment, as far as it is still usable, all unconsumed provisions, supplies and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of the Government of to an entity nominated by them.

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

V. Facilities for UNPROFOR

Premises required for conducting the operational and administrative activities of UNPROFOR and for accommodating members of UNPOROFOR

16. The Government shall provide without cost to UNPROFOR and in agreement with the Special Representative such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNPROFR and for the accommodation of the members of UNPROFOR. Without prejudice to the status of all such premises in the territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. Where United Nations troops are co-located with military personnel of the Government, direct an immediate access by UNPROFOR to those premises shall be guaranteed. Such facilities shall be returned to the Government in proper condition.

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

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

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

Provisions, supplies and services, and sanitary arrangements

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

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

Recruitment of local personnel

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

Currency

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

VI. Status of the members of UNPROFOR

Privileges and immunities

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

25. Members of the United Nations Secretariat assigned to the civilian component to serve with UNPROFOR remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

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

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

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

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

30. Members of UNPROFOR shall have the right to import free of duty their personal effects in connection with their arrival in the territory. They shall be subject to the local laws and regulations governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in the territory with UNPROFOR. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of UNPROFOR, including the military component, upon prior written notification. On departure from the territory, members of UNPROFOR may, including the military component, upon prior written notification. On departure from the territory, members of UNPROFOR may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Special Representative certifies were received in pay and emoluments from the United Nations or from a participating State and are a reasonable residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the members of UNPROFOR.

31. The Special Representative shall cooperate with the Government and shall render all assistance within his power in ensuring the observance of the local customs and fiscal laws and regulations by the members of UNPROFOR, in accordance with the present Memorandum of Understanding.

Entry, residence and departure

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

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

34. For the purpose of such entry or departure, members of UNPROFOR shall only be required to have: (a) an individual or a collective movement order issued by or under the authority of the Special Representative or any appropriate authority of a participating State; and (b) a personal identity card issued in accordance with paragraph 35 of the present Memorandum of Understanding, except in the case of first entry, when the personal identity card issued by the appropriate authorities of a participating shall be accepted in lieu of the said identity card.

Identification

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

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

Uniform and arms

37. Military members and the United Nations civilian police of UNPROFOR shall wear, while performing official duties, the national military or police uniform of their respect States with standard United Nations accoutrements. United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of UNPROFOR may e authorized by the Special Representative at other times. Military members and civilian police of UNPROFOR and United Nations Security Officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders.

Permits and licences

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

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

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

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

41. The military police of UNPROFOR shall have the power of arrest over the military members of UNPROFOR. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel mentioned in paragraph 40 above

may take into custody any other person on the premises of UNPROFOR. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

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

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

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

43. When a person is taken into custody under paragraph 41 or paragraph 42(b), UNPROFOR or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

44. UNPROFOR and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has bee a transfer of custody under the provisions of paragraphs 41 to 43.

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

Jurisdiction

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

47. Should the Government consider that any member of UNPROFOR has committed a criminal offence, it shall promptly inform the Special Representative and present to him any evidence available to it. Subject to the provisions of paragraph 24:

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

(*b*) Military members of the military component of UNPROFOR shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences which may be committed by them in the territory.

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

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

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

Deceased members

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

VII. Settlement of Disputes

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

permit an appeal to a tribunal established in accordance with paragraph 52. The awards of the commission shall be notified to the parties and, if against a member of UNPROFOR, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

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

52. Any other dispute between UNPROFOR and the Government, and any appeal that both of them agree to allow from the award of the claims commission established pursuant to paragraph 50 shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, *mutatis mutandis*, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

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

VIII. Supplemental arrangements

54. The Special Representative and the Government may conclude supplemental arrangements to the present Memorandum of Understanding.

IX. Liaison

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

X. Miscellaneous provisions

56. Wherever the present Memorandum of Understanding refers to the privileges, immunities and rights of UNPROFOR and to the facilities the Government undertakes to provide to UNPROFOR, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

57. The present Memorandum of Understanding shall remain in force until the departure of the final element of UNPROFOR from the territory except that:

(*a*) The provisions of paragraphs 46 and 52 shall remain in force;

(*b*) The provisions of paragraph 50 shall remain in force until all claims have been settled that arose prior to the termination of the present Memorandum of Understanding and were submitted prior to or within three months of such termination.

(*d*) Exchange of letters constituting an agreement between the United Nations and the Government of Liberia on the establishment of the United Nations Observer Mission in Liberia.[10] New York, 9 May and 29 July 1994

I

LETTER FROM THE UNITED NATIONS

9 May 1994

I have the honour to refer to resolution 866 (1993 of 22 September 1993 by which the security Council has, *inter alia*, welcomed the report of the Secretary-General on Liberia dated 9 September 1993, (S/26422) and decided to establish the United Nations Observer Mission in Liberia (hereinafter referred to as "UNOMIL") under its authority and under the direction of the Secretary-General through his Special Representative. In the above-mentioned resolution, the Security Council further defined the structure and mandate of UNOMIL.

In order to facilitate the fulfilment of UNOMIL's purposes, I propose that the Liberian National Transitional Government (referred to hereinafter as the "Government"), in implementation of its obligations under Article 105 of the Charter of the United Nations, extend to UNOMIL, its property, funds and assets the status, privileges and immunities provided in the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as the "Convention"), to which Liberia acceded on 14 March 1947.

In view of the importance of the functions which UNOMIL will perform, I propose that your Government extend to:

—The Special Representative, the Chief Military Observer, the Chief Electoral Officer, the Chief Administrative Officer and other high ranking members of UNOMIL whose names shall be communicated to the Government, the privileges and immunities, exemptions and facilities which are granted to diplomatic envoys in accordance with international law;

—Officials of the United Nations Secretariat and United Nations volunteers assigned to serve with UNOMIL, the privileges and immunities provided under articles V and VII of the Convention;

—Other persons assigned to serve with UNOMIL including the military observers, 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 he functions of UNOMIL also include:

(i) The unrestricted freedom of entry and exit without delay or hindrance of its personnel, property, supplies, equipment, spare parts and means of transport;

(ii) The unrestricted freedom of movement on land, sea and air of personnel, property, supplies, equipment, spare parts and means of transport;

(iii) The exemption from all direct taxes, import and export duties and registration fees and charges;

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

(v) The acceptance of United Nations registration of means of transport on land, sea an d in the air and United Nations licensing of the operators thereof;

(vi) 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; and

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

It is understood that UNOMIL shall be provided, at no cost to the United Nations, in agreement with the Special Representative, with all such land and premises as may be necessary for the accommodation and fulfilment of its functions. 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 your Government shall provide UNOMIL personnel, where necessary and upon request of the Special Representative, with maps and other information including location of mine fields and other dangers and impediments which might be useful in facilitating its tasks and movements. Furthermore, and in accordance with paragraph 12 of Security Council resolution 866 (1993), UNOMIL and all of its personnel shall be provided with necessary safety and security.

If the above provisions meet with your approval, I would propose that this letter and the written confirmation of your acceptance of its provisions constitute an agreement between the United Nations and the Liberian National Transitional Government. As required under paragraph 9 of Security Council resolution 866 (1993), this agreement is to be concluded not later than 60 days after the installation of the Liberian National Transitional Government.

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

II

LETTER FROM THE PERMANENT MISSION OF LIBERIA TO THE UNITED NATIONS

29 July 1994

I have the honour to refer to your letter of 9 May 1994 concerning the proposed exchange of letters for the Status of Mission Agreement between the Liberian National Transitional Government and the United Nations on the establishment of the United Nations Observer Mission in Liberia (UNOMIL) and to quote hereunder, the said letter *in extenso*:

[See letter I]

In keeping with instructions received from my Government on 29 July 1994, I wish to confirm its acceptance of the provisions outlined in your letter *supra* with the following modifications as subsequently agreed: "That the exemption of taxes shall not include taxes which are charges for public utilities services and that UNOMIL shall bear the cost of its own rent".

It is understood that your letter and this written confirmation of my Government's acceptance of the provisions, including said modifications, constitute an agreement between the Liberian National Transitional Government and the United Nations.

(*Signed*) William BULL
Permanent Representative

III

LETTER FROM THE PERMANENT MISSION OF LIBERIA TO THE UNITED NATIONS

29 July 1994

Mr. Assistant Secretary General:

I have the honour to refer to your letter of 17 May 1994 forwarding the Secreatry-General's letter addressed to me concerning the Status of Mission Agreement between the Liberian National Transitional Government and the United Nations for the establishment of the United Nations Observer Mission in Liberia (UNOMIL).

In keeping with instructions received from my Government on 29 July 1994, I have accordingly confirmed its acceptance of the provisions of the Agreement as contained in the Secretary-General's letter with the following modifications as subsequently agreed: "That the exemption of taxes shall not include taxes which are charges for public utilities services and that UNOMIL shall bear the cost of its own rent".

I regret the delay in concluding this matter and wish to register my Government's deep appreciation for the constructive role being played by the United Nations in advancing the peace process in Liberia.

(*Signed*) William BULL
Permanent Representative

(*e*) Agreement between the United Nations and the Government of Slovakia on the provision of facilities for the technical conversion training of the Bangladesh military contingent assigned to the United Nations Protection Force in Bosnia and Herzegovina." Signed at Bratislava on 23 September 1994

Article IV

APPLICATION OF THE CONVENTION

For the purpose of the training referred to in article I hereinabove, the privileges and immunities specified in the present Agreement as well as those provided for in the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (the "Convention"), to which Slovakia succeeded on 28 May 1993, shall apply.

Article V

INTERNATIONAL CHARACTER

1. The Contingent is an integral part of the military personnel of UNPROFOR and the duties of such Contingent or any other military personnel of UNPROFOR or officials of the United Nations assigned to provide assistance in connection with the training are to conducted with the interests of the United Nations only in view.

2. The Government undertakes to respect the exclusively international nature of the United Nations in connection with the training.

Article VI

SERVICES AND FACILITIES

1. For the purpose of the training referred to in article I above, the Government shall also make available to the United Nations the following:

(*a*) Suitable training grounds and areas, including, *inter alia*, a shooting range, driving track and maintenance area, and related facilities;

(*b*) Administration of the training grounds and areas including administrative support and personnel;

(*c*) Use of barracks, maintenance sheds and offices;

(*d*) Second line (stand-by) medical care; including ambulance and qualified doctors;

(*e*) Security and protection of the training grounds and areas, and of the personnel and equipment of the United Nations, including military personnel of UNPROFOR, and personnel and equipment of the private German Contractor of the United Nations.

2. The Government will provide the commodities, services and facilities specified in the Letter of Assist annexed hereto as annex B, which constitutes an integral part of this Agreement. Those commodities, services and facilities shall be provided at the request and cost of the United Nations, the maximum costs therefor being as stipulated in annex B hereof.

3. The Government shall be responsible to the United Nations for any loss or damage incurred by the United Nations or its property attributable to any defect in the commodities, services or facilities provided by the Government under this Agreement, or attributable to any negligent or wilful conduct on the part of the instructors and personnel of, or provided by, the Government.

Article VIII

Indemnity

1. The Government shall indemnify and hold and save harmless the United Nations, its officials, agents, servants and employees, from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses, by any person or entity, attributable to acts or omissions of the instructors and personnel of, or provided by, the Government under this Agreement or attributable to any defect in the commodities, services or facilities provided by the Government under this Agreement.

2. The Government acknowledges that the training to be provided under this Agreement will involve equipment provided to the United Nations by the Government of Germany for use in connection with UNPROFOR. The United Nations accepts no liability for any loss or damage attributable to any inherent or latent defect in that equipment or any improper use or maintenance of that equipment by the instructors and personnel of, or provided by, the Government.

3. Without limiting the generality of article VIII.1 hereof, the Government agrees to indemnify and hold and save harmless the United Nations, its officials, agents, servants and employees, from and against all suits, claims, demands and liability of any nature or kind including their costs and expenses arising from any inherent or latent defect in the equipment referred to in the previous paragraph or any improper use or maintenance of the equipment by the instructors and personnel of, or provided by, the Government under this Agreement.

Article IX

Priveleges and immunities

1. Military personnel of UNPROFOR either undertaking the training or providing assistance in connection with the training shall enjoy the status accorded to members of national contingents assigned to UNPROFOR. Such personnel shall, pursuant to the status referred to above, be subject to the exclusive jurisdiction of their respective States in respect of any criminal offenses which may be committed by them in Slovakia.

2. Officials of the United Nations assigned to provide assistance in connection with the training remain officials of the United Nations within the meaning of articles V and VII of the Convention.

3. The equipment which shall be used for the purpose of the training shall, for the purpose of this Agreement, be treated as property of the United Nations.

Article X

ENTRY AND EXIT

The personnel and equipment referred to in article IX above shall also enjoy necessary facilities for entry in or exit from Slovakia. All such facilities shall be dealt with as speedily as possible.

Article XI

SAFETY AND SECURITY

The Government shall ensure the safety and security of all the personnel and equipment referred to in article IX above.

Article XII

SETTLEMENT OF DISPUTES

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

2. Nothing in the Agreement shall be deemed a waiver, expressed or implied, of the privileges and immunities of the United Nations under the Convention.

(*f*) Agreement between the United Nations and the Government of India regarding arrangements for the fiftieth session of the United Nations Economic and Social Commission for Asia and the Pacific [to be held at New Delhi from 5 to 13 April 1994].[12] Signed at Bangkok on 16 February 1994

Article X

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 as indicated above, claim or other demand directly related to the session.

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, to which India is a party, shall be applicable in respect of the session. In particular, the representatives and observers 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 session 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 session 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 session.

3. 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.

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[13] or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency[14], as appropriate.

5. Without prejudice to the preceding paragraphs of the present article, all persons performing functions in connection with the session, including those referred to in article VI 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 shall have the right of entry into and exit from India, 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 session, provided the application for the visa is made at least three weeks before the opening of the session. If the application is made later due to unavoidable reasons, still it would be accepted and all necessary arrangements shall be made to facilitate grant of visa in time. In exceptional circumstances, all possible measures will be taken to facilitate grant of visa for the duration of the session upon arrival at the Indira Gandhi International Airport 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 late than three days before the closing of the session.

7. 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.

8. All persons referred to in article II above shall have the right to take out of India at the time of their departure, without any restriction, any unexpended portions of the funds they brought in to India in connection with the session and to reconvert any such funds at the rate of exchange in force at the date of reconversion.

9. The Government shall allow the temporary importation, tax-free and duty-free, of all equipment, including technical equipment accompanying representatives of information media, provided that such equipment is re-exported. The Government shall also 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.

(*g*) Agreements between the United Nations and the Government of China regarding the arrangements for the Fourth World Conference on Women: Action for Equality, Development and Peace [to be held at Beijing from 4 to 15 September 1995].[15] Signed at Beijing on 14 September 1994

Article X

LIABILITY

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

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

(*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 except when such injury or damage was caused by gross negligence or wilful misconduct of United Nations personnel.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, to which the People's Republic of China became a party on 11 September 1979, shall be applicable in respect of the Conference. In particular, the representatives of States referred to in article II, paragraph 1(a), 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, paragraph 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 referred to in article II, paragraph 1(g) and (h) above shall enjoy the privileges and immunities provided under article VI and VII of the Convention.

2. The participants referred to in article II, paragraph 1(b) and (c) 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. The observers referred to in article II, paragraph 1(e) and (f) above shall be accorded the appropriate facilities necessary for the independent exercise of their activities in connection with the Conference.

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

4. The representatives of the press and of other information media, referred to in article II, paragraph 3, above shall enjoy the facilities necessary for the independent exercise of their functions in connection with the Conference.

5. The Government shall take the necessary measures to ensure that the entry into and exit from China for all persons referred to in article II are facilitated without undue delay. Visas and entry permits, where required, shall be granted to all those invited to the Conference free of charge, as speedily as possible and no later than two weeks before the date of the opening of the Conference. If the application of visa is not made at least three weeks before the opening of the Conference, the visa shall be granted when possible within three days.

6. Distinguished guests officially invited to the Conference by the Government shall be given access to the Conference area by the United Nations.

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the Conference premises shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority 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 People's Republic of China at the time of their departure, without any restriction, any unexpended portions of the funds they brought in to the People's Republic of China in connection with the Conference and to reconvert any such funds at the prevailing market rate.

Article XII

Import duties and tax

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 undue delay to the United Nations, any necessary import and export permits for this purpose. Any such equipment shall be re-exported after the conclusion of the Conference, unless alternative arrangements have been made with the agreement of the Government.

Article XIII

SETTLEMENT OF DISPUTES

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two.

(*h*) Agreement between the United Nations and the Government of Egypt regarding the arrangements for the International Conference on Population and Development [to be held at Cairo from 5 to 13 September 1994].[16] Signed at Geneva on 6 July 1994

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide the necessary premises, including conference rooms for informal meetings, office space, working areas and other related facilities, as specified in the schedule hereto. The Government shall at its expense furnish, equip and maintain in good repair all these premises and facilities in a manner that the United Nations considers adequate for the effective conduct of the Conference. The conference rooms shall be equipped for reciprocal simultaneous interpretation in the six official languages of the United Nations and shall have facilities for sound recording in that number of languages as well as facilities for press, television, radio and film operations, to the extent required by the United Nations. The premises shall remain at the disposal of the United Nations 24 hours a day from two weeks prior to the Conference until a maximum of six days after its close.

2. The Government shall provide, if possible within the conference area, a bank, post office, telephone, fax, telex and telegram facilities, as well as appropriate eating facilities, a travel agency and a secretarial service centre, equipped in consultation with the United Nations, for the use of delegations to the conference on a commercial basis.[17]

3. The Government shall bear the cost of all necessary utility services, including telephone communications, of the secretariat of the Conference and its communications by telex, telephone or fax with United Nations Headquarters in New York or other established headquarters or appropriate United Nations offices when such communications are authorized by or on behalf of the Secretary-General of the Conference.

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

Article X

LIABILITY

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

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

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 Egypt is a party, shall be applicable in respect of the Conference. In particular, the representatives of States referred to in article II, paragraph 1(a), 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 article V and VII of the Convention and the experts and consultants in the field of population and development, referred to in article II, paragraph 1(i), above shall enjoy the privileges and immunities provided under article VI and VII of the Convention.

2. The representatives or observers of the associate members of the regional commissions of the United Nations referred to in article II, paragraph 1(b), above which are not member States of the United Nations or its specialized agencies, 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 or observers referred to in article II, paragraphs 1 (c), (e), (f) and (j), 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.

4. The representatives or observers of the specialized agencies of the United Nations, referred to in article II, paragraph 1(d), above shall enjoy the privileges and immunities provided under article VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies.

5. 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 connection with the Conference.

6. 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.

7. All persons referred to in article II shall have the right of entry into and exit from Egypt, and no impediment shall be imposed on their transit to and from the conference 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 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 at the Cairo International Airport 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.

8. 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.

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

10. 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.

(*i*) Agreement between the United Nations and the Government of Barbados regarding the arrangements for the Global Conference on the Sustainable Development of Small Island Developing States, Bridgetown, 25 April to 6 May 1994.[18] Signed at New York on 11 March 1994

Article X

LIABILITY

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

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

(*c*) The employment for the Conference of 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

Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations to which Barbados became a party in 1972, shall be applicable in respect of the Conference. In particular the representatives of States referred to in article II, paragraph 1(a), 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 Conference referred to in article II, paragraph 1(h), above shall enjoy the privileges and immunities provided under article V and VII of the Convention, and any experts on mission for the United Nations in connection with the Conference referred to in article II, paragraph 1(g), above shall enjoy the privileges and immunities provided under article VI and VII of the Convention.

2. The participants referred to in article II, paragraph 1(b), (c), and (i), 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. The observers referred to in article II, paragraph 1(e) and (f), above shall be accorded the appropriate facilities necessary for the independent exercise of their activities in connection with 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 agencies of the specialized agencies of the United Nations and of the International Atomic Energy Agency, referred to in article II, paragraph 1(d), above shall enjoy the privileges and immunities under the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

5. Without prejudice to the preceding paragraphs of the article, all persons performing functions in connection with the Conference, and all those invited or accredited to the Conference, including representatives of the press or of other information media, 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 Barbados, and no impediment shall be imposed on their transit to and from the Conference area. Visas and entry permits, where required, shall be granted to all those invited to the Conference free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference. If the application for the visa is not made at least two-and-a-half weeks before the opening of the Conference, 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 arrival to those who were unable to obtain them prior to their arrival.

7. Distinguished guests officially invited to the Conference by the Government shall be given access to the Conference area by the United Nations.

8. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the conference premises shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations. The premises shall be inviolable for the duration of the Conference, including the preparatory stage and winding-up.

9. All persons referred to in article II above shall have the right to take out of Barbados at the time of their departure, without any restriction, any unexpended portion of the funds they brought into Barbados in connection with the Conference, or received from Conference funds in Barbados, and to reconvert any such funds at the prevailing market rate.

Article XII

IMPORT DUTIES AND TAX

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 to the United Nations, any necessary import and export permits for this purpose.

(*j*) Agreement between the United Nations and the Government of Denmark regarding arrangements for the World Summit for Social Development [to be held at Copenhagen from 11 to 12 March 1995].[19] Signed at New York on 22 August 1994

Article XI

LIABILITY

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

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

(*b*) Injury to persons, or damage to or loss of property caused by, or incurred in using, the transport services referred to in article VII;

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

2. The Government shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim or other demand, except where it is agreed by the Parties hereto that such damage, loss or injury is caused by the gross negligence or wilful misconduct of United Nations personnel.

Article XII

Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations, to which Denmark became a party on 10 June 1949, shall be applicable in respect of the Summit. In particular, the representatives of States referred to in article III, paragraph 1(a), 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 Summit referred to in article III, paragraphs 1(h) and 2, above shall enjoy the privileges and immunities provided under article V and VII of the Convention, and any experts and consultants referred to in Article III paragraph 1(g), shall enjoy the privileges and immunities provided under article VI and VII of the Convention.

2. The participants referred to in article III, paragraph 1(b), (c), (i), (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 summit.

3. The personnel provided by the Government under article IX 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 Summit.

4. The representatives of the specialized or related agencies, referred to in article III, paragraph 1(d), above shall enjoy the privileges and immunities under 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 Summit, and all those invited or accredited to the Summit including representatives of the press or of other information media, shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Summit.

6. All persons referred to in article III shall have the right of entry into and exit from Denmark, and no impediment shall be imposed on their transit to and from the Summit area. Visas and entry permits, where required, shall be granted to all those invited to the Summit free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Summit. If the application for the visa is not made at least two-and-a-half weeks before the opening of the Summit, 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 duration of the Summit are delivered at the airport of arrival to those who were unable to obtain them prior to their arrival.

7. Distinguished guests officially invited to the Summit by the Government shall be given access to the Summit area by the United Nations.

8. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the Summit premises shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations. The premises shall be inviolable for the duration of the Summit, including the preparatory stage and winding-up.

9. All persons referred to in article III 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 in to Denmark and/or received from the Summit funds in Denmark in connection with the Summit and to reconvert any such funds at the prevailing market rate.

Article XIII

IMPORT DUTIES AND TAXES

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 Summit. It shall issue, without delay to the United Nations, any necessary import and export permits for this purpose.

(*k*) Agreement between the United Nations and the Government of the Philippines regarding the arrangements for the Asian and Pacific Ministerial Conference in Preparation for the World Summit for Social Development of the United Nations Economic and Social Commission for Asia and the Pacific.[20] Signed at Bangkok on 10 May 1994

Article X

LIABILITY

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

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

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 Philippines is a party, shall be applicable in respect of the Conference. In particular, the representative of States referred to in article II, paragraph 1(a) and (b), above shall enjoy the privi-

leges 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(f) 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 Conference shall enjoy the privileges and immunities provided under article VI and VII of the Convention.

2. The representatives or observers referred to in article II, paragraphs 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 provide by the Convention on the Privileges and Immunities of the Specialized Agencies or the Agreement on the Privileges of the International Atomic Energy Agency, as appropriate.

5. Without prejudice to the preceding paragraph 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 Philippines, 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 at (Ninoy Aquino International Airport) to participants who where 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, article II, 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 Philippines at the time of their departure, without any restriction, any unexpected portions of the funds they brought in to the Philippines 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.

(*l*) Exchange of letters constituting an agreement between the United Nations and the Government of the Republic of Korea concerning arrangements regarding the Asia-Pacific Workshop on Human Rights Issues, to be held at Seoul from 18 to 20 July 1994.[21] Geneva, 10 and 17 June 1994

I

Letter from the United Nations

10 June 1994

I have the honour to refer to the discussions between officials of the United Nations Centre for Human Rights and representatives of the Government of the Republic of Korea concerning the organization of the Third Human Rights Workshop for the Asia-Pacific Region to be held at Seoul, in cooperation with the Government through the Ministry of Foreign Affairs and the Centre for Human Rights.

With respect to the above-mentioned Workshop, please find set out below the text of arrangements between the United Nations and the Government of Korea (hereinafter referred to as "the Government"):

"Arrangements between the United Nations and the Government of the Republic of Korea regarding the Asia-Pacific Workshop on Human Rights Issues to be held at Seoul from 18 to 20 July 1994.

"1. Participants in the Workshop will be Government officials from Asia and the Pacific; they will be invited by the United Nations Assistant Secretary-General for Human Rights. Representatives of specialized agencies, intergovernmental organizations, the United Nations Economic and Social Commission for Asia and the Pacific, and non-governmental organizations will also be invited by the United Nations Assistant Secretary-General for Human Rights to participate as observers in the Workshop, in accordance with the procedure established under the Technical Cooperation Programme of the United Nations Centre for Human Rights.

"2. The United Nations Centre for Human Rights will send to Seoul four officials to organize and direct the Workshop and will invite eight international experts to address the Workshop.

"3. The United Nations shall meet the travel expenses and daily subsistence allowance in respect of the eight international experts, the United Nations officials and thirty Government officials referred to in paragraph 1 and 2 above, as specified in the attached annex, in accordance with the Organization's Rules and Procedures

"4. The Government shall provide for the Workshop adequate conference facilities, including personnel resources, space and office supplies, as well as local transportation, as described in the attached annex. The Government further assures

that the Government officials participating in the Workshop, and the United Nations officials and international experts, will benefit from hotel accommodation at reasonable rates.

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

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

(*a*) Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provide under article V and VII of the Convention;

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

(*c*) 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;

(*d*) Participants, observers and other persons invited by the United Nations, as well a the 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;

(*e*) All international experts, officials of the United Nations, participants and persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from the Republic of Korea. Visas and entry permits, where required, shall be granted promptly and free of charge,

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

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

"9. Any dispute concerning the interpretation or implementation of the Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations, or of any other applicable agreement, shall, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government and the third, who shall be the Chairman,

by the other two arbitrators, If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not, within three months of the appointment or nomination of the second one of them appoint the chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the Tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them."

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

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

II

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

17 June 1994

I have the honour to acknowledge the receipt of your letter No. GSO/216/3 (54) of 10 June 1994, which proposes the Arrangements between the United Nations and the Government of the Republic of Korea regarding the Asia-Pacific Workshop on Human Rights Issues, to be held at Seoul from 18 to 20 July 1994.

I have the further honour to confirm on behalf of the Government of the Republic of Korea the foregoing arrangements and to agree that your letter and its annex, and this letter shall be regarded as constituting an agreement between the Government of the Republic of Korea and the United Nations, which will enter into force on the date of this reply.

(*Signed*) Seung HO
Permanent Representative

(*m*) Exchange of letters constituting an agreement between the United Nations and the Government of Lithuania concerning arrangements regarding the Seminar on Human Rights to held at Vilnius from 12 to 14 April 1994.[22] Geneva, 4 March and 7 April 1994

I

LETTER FROM THE UNITED NATIONS

4 March 1994

I have the honour to refer to the offer by the Parliament of the Republic of Lithuania, to organize, in cooperation with the United Nations Centre for Human Rights, a Seminar on Human Rights, to be held at Vilnius from 12 to 14 April 1994, and to the subsequent discussions held between officials of the United Nations Centre for Human Rights and representatives of your Government on this matter.

With respect to the above-mentioned Seminar, please find set out below the text of arrangements between the United Nations and the Government of Lithuania (hereinafter referred to as "the Government"):

"Arrangement between the United Nations and the Government of the Republic of Lithuania regarding the Seminar on Human Rights to be held at Vilnius from 12 to 14 April 1994

"1. Participants in the Seminar will be members of the Parliament, Government agencies, the legal profession, academic institutions and non-governmental organizations. They will be invited by the Government to participate in the Seminar.

"2. The United Nations Centre for Human Rights will send to Vilnius the staff necessary to organize and direct the Seminar, and will invite three expert speakers. The United Nations will meet the travel expenses and daily subsistence allowance of these persons, in accordance with the Organization's Rules and Regulations. The financial obligations of the United Nations Centre for Human Rights will be funded by the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights.

"3. The Government will provide for the Seminar adequate conference facilities, including personnel resources, space and office supplies, as well as transportation, as described in the attached annex.

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

"5. The Convention of 13 February 1946, on the Privileges and Immunities of the United Nations, to which Lithuania is a party, shall be applicable to the Seminar, in particular:

(*a*) Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided under article V and VII of the Convention;

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

(*c*) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all experts and persons performing functions in connection with the 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;

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

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

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

"7. The Government shall notify the local authorities of the convening of the Seminar and request appropriate protection.

"8. Any dispute concerning the interpretation or implementation of the Agreement, except for a dispute subject to the appropriate provision of the Convention on the Privileges and Immunities of the United Nations, or of any other applicable agreement will, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the Chairman, then such arbitrator will be nominated by the President of the International Court of Justice, at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal will adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance will be final and, even if rendered in default of one of the parties, be binding on both of them."

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

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

II

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

7 April 1994

Further to our letter of 21 March 1994 and in response to your letter of 4 March 1994, we have the honour to communicate to you the agreement of the Government of Lithuania to organize the human rights seminar at Vilnius from 12 to 14 April 1994.

The arrangements for organization of the seminar, set out in the letter of 4 March 1994, have been considered and accepted by the Government and Parliament of Lithuania and all necessary steps have been taken to ensure the conduct of the seminar to the satisfaction of all participants.

The United Nations Centre for Human Rights at Geneva has been informed of the proposed agenda and has been provided with a list of participants.

(*Signed*) N. PRIELAIDA
Ambassador

(*n*) Exchange of letters constituting an agreement between the United Nations and the Government of Greece concerning arrangements regarding the Seminar on Harvesting and Silviculture of Degraded and Coppice Forests in the Mediterranean Region and the twentieth session of the joint FAO/ECE/ILO Committee on Forest Technology, Management and Training, of the Economic Commission for Europe, to be held at Thessaloniki from 1 to 3 November and from 7 to 10 November 1994, respectively.[23] Geneva, 17 October 1994, and Athens, 26 October 1994

I

LETTER FROM THE UNITED NATIONS

17 October 1994

I have the honour to give you below the text of arrangements between the United Nations and the Government of Greece (hereinafter referred to as "the Government") in connection with the Seminar on Harvesting and Silviculture of Degraded and Coppice Forests in the Mediterranean Region and the Twentieth Session of the Joint FAO/ECE/ILO Committee on Forest Technology, Management and Training, to be held, at the invitation of the Government, in Thessaloniki, from 1 to 3 November and from 7 to 10 November 1994, respectively.

"Arrangements between the United Nations and the Government of Greece regarding the Seminar on Harvesting and Silviculture of Degraded and Coppice Forests in the Mediterranean Region and the twentieth session of the Joint FAO/ECE/ILO Committee on Forest Technology, Management and Training, of the Economic Commission for Europe, to be held in Thessaloniki, from 1 to 3 November and from 7 to 10 November 1994, respectively."

"1. Participants in the Seminar and Session will be invited by the Executive Secretary of the United Nations Economic Commission for Europe in accordance with the rules of procedure of the Commission and its subsidiary organs.

"2. In accordance with the General Assembly resolution 47/202, part A, paragraph 17, adopted on 22 December 1992, the Government will assume responsibility for any supplementary expenses arising directly or indirectly from the Seminar and Session, namely:

(*a*) To supply to all United Nations staff members who are to be brought to Thessaloniki, air tickets, economy class, Geneva-Thessaloniki-Geneva, to be used on the airlines that cover this itinerary;

(*b*) To supply vouchers for air freight and excess baggage for documents and records; and

(*c*) To pay to all staff, on their arrival in Greece, according to United Nations rules and regulations, a subsistence allowance in local currency at the Organization's official daily rate applicable at the time of the Seminar and Ses-

sion, expenses up to 108 United States dollars per traveller, in convertible currency, provided that the traveller submits proof of having incurred such expenses.

"3. The Government will provide for the Seminar and Session adequate facilities including personnel resources, space and office supplies as described in the attached annex.

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

"5. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which Greece is a party, shall be applicable to the Seminar and Session, in particular:

(*a*) The participants shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar and Session shall enjoy the privileges and immunities provided under article 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 Seminar and Session shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar and Session;

(*c*) Personnel provided by the Government pursuant to the 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 and Session;

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

"6. The rooms, offices and related localities and facilities put at the disposal of the Seminar and Session by the Government shall be the Seminar and Session Area, which will constitute United Nations premises within the meaning of article II, section 3, of the Convention of 13 February 1946.

"7. The Government shall notify the local authorities of the convening of the Seminar and Session and request appropriate protection.

"8. Any dispute concerning the interpretation or implementation of these arrangements, except for a dispute subject to the appropriate provisions of the Convention on Privileges and Immunities of the United Nations or of any other applicable agreement will, unless the parties agree otherwise, be submitted to a tribunal

of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them, appoint the Chairman, then such arbitrator will be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal will adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance will be final and, even if rendered in default of one of the parties, be binding on both of them.

"9. These arrangements will also apply to the study tour which is being organized in conjunction with the Seminar and Session on 4 and 5 November 1994."

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

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

II

LETTER FROM THE SECRETARY-GENERAL OF THE MINISTRY OF AGRICULTURE, GREECE

26 October 1994

Referring to your letter of 17 October 1994 concerning the "Seminar on Harvesting and Silviculture of Degraded and Coppice Forest in the Mediterranean Region" we inform you that as the host country we have already taken all the necessary measures as foreseen for the best organization of the Seminar in Thessaloniki during the period from 1 to 5 November, and the session of the joint FAO/ECE/ILO Committee from 7 to 10 November.

This letter is according to your proposal the statement of our commitments for the organization of the meeting as it was expressed also in our letter to Mr. C. Prins of 28 April 1994.

(*Signed*) J. SBOKOS
Secretary General
Ministry of Agriculture

(*o*) Exchange of letters constituting an agreement between the United Nations and the Government of Sweden concerning arrangements for the Fourth United Nations Training Course on Remote Sensing Education for Educators, organized in cooperation with the Government of Sweden, to be held at Stockholm and Kiruna from 2 May to 10 June 1994.[24] Vienna, 6 and 29 April 1994

I

LETTER FROM THE UNITED NATIONS

6 April 1994

I have the honour to refer to General Assembly resolution 48/39 of 10 December 1993, and in particular to paragraphs 16 and 17 thereof, by which the Assembly emphasized the urgency and importance of fully implementing the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE 82) as early as possible, and reaffirmed its approval of the recommendation of the Conference regarding the establishment and strengthening of regional mechanisms of cooperation and their promotion and creation through the United Nations system.

In response to resolution 48/39 and in accordance with UNISPACE 82 recommendations, the United Nations Office for Outer Space Affairs has included, as an activity of its Space Applications Programme, the organization of a training course on remote sensing education for educators in its programme of work for 1994.

The United Nations has received with appreciation, from your Excellency's Government, the offer to host, as it did in the past, the Fourth United Nations Training Course on Remote Sensing Education for Educators, which will be organized in cooperation with the Swedish Board for Investment and Technical Support (BITS) and Stockholm University for the benefit of developing countries. As your Excellency is aware, this course will be hosted by Stockholm University, Stockholm, and SSC Satellitbild Aktiebolag in Kiruna from 2 May to 10 June 1994. Twenty-four educators from the educational communities in developing countries will participate in the training course.

At the May 1993 negotiations between Sweden (BITS and Stockholm University) and the United Nations (Office for Outer Space Affairs), it was agreed that: (i) Sweden and the United Nations will each finance the international travel of twelve participants; and (ii) Sweden will provide room, board, local transportation and an allowance for incidental expenses in Sweden for all the 24 participants.

In accordance with the understanding expressed in the exchange of letters between the Office of Legal Affairs of the United Nations and the Permanent Mission of Sweden to the United Nations dated 27 November 1987 regarding the arrangements for the United Nations meetings, seminars or workshops to be conducted in Sweden, I wish to propose that the following terms shall apply, as they did on past occasions, to this Training Course:

(*a*) (i) The Convention on the Privileges and Immunities of the United Nations of 13 February 1946, and the Convention on the Privileges and Immunities of Specialized Agencies of 21 November 1947 shall be applicable in respect of the Training Course;

(ii) Without prejudice to the provision of the Convention on the Privileges and Immunities of the United Nations and of Specialized Agencies, all participants and persons performing functions in connection with the Training course shall enjoy such facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Training Course;

(iii) Personnel provided by the Government of Sweden and locally employed personnel pursuant to this Agreement shall enjoy immunity from legal process in respect of words, spoken or written, and any act performed by them in their official capacity in connection with the Training Course.

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

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

(i) Injury to persons or damage to property in Conference or office premises provided for the Training Course;

(ii)]The transportation provided by the Government;

(iii) The employment for the Training Course of personnel provided or arranged by the Government, and the Government shall hold the United Nations and its personnel harmless in respect of any such claim, resulting from the performance of the services under this Agreement, except where it is agreed by the Secretary-General of the United Nations and your Government that such claims arise from gross negligence or wilful misconduct of such persons.

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

then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

I further propose that upon receipt of your 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 Sweden and the United Nations concerning the arrangements for the Training Course.

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

II

LETTER FROM THE PERMANENT MISSION OF SWEDEN TO THE INTERNATIONAL ORGANIZATIONS IN VIENNA

29 April 1994

In reply to your letter of 6 April 1994, I have the honour to inform you that the Government of Sweden has decided to conclude an agreement concerning the arrangements for the Fourth United Nations Training Course on Remote Sensing Education for Educators in accordance with the proposal of the United Nations in its above-mentioned letter. It is therefore hereby agreed that the above-mentioned letter, together with the present letter, constitutes an agreement between the Government of Sweden and the United Nations concerning the arrangements for the Training Course.

(*Signed*) Anita GRADIN
Permanent Representative

(*p*) Exchange of letters constituting an agreement between the United Nations and the Government of Hungary concerning arrangements regarding the meeting of signatories to the Convention on the Transboundary Effects of Industrial Accidents[25], to be held at Budapest from 23 to 25 March 1994.[26] Geneva, 23 and 25 February 1994

I

LETTER FROM THE UNITED NATIONS

23 February 1994

I have the honour to give you below the text of arrangements between the United Nations and the Government of Hungary (hereinafter referred to as "the Government") in connection with the Meeting of the Signatories to the Convention on the Transboundary Effects of Industrial Accidents, to be held, at the invitation of the Government, in Budapest, from 23 to 25 March 1994.

"Arrangements between the United Nations and the Government of Hungary regarding the Meeting of the Signatories to the Convention on the Transboundary Effects of Industrial Accidents, to be held at Budapest from 23 to 25 March 1994.

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

"2. In accordance with paragraph 5 of General Assembly resolution 40/243 of 18 December 1985, the Government will assume responsibility for any supplementary expenses arising directly or indirectly from the Meeting, namely:

(*a*) To supply to all United Nations staff members who are to be brought to Budapest, air tickets, economy class, Geneva-Budapest-Geneva, to be used on the airlines that cover this itinerary;

(*b*) To supply vouchers for air freight and excess baggage for document and records; and

(*c*) To pay to all staff, on their arrival in Hungary, according to United Nations rules and regulations, a subsistence allowance in local currency at the Organization's official daily rate applicable at the time of the Meeting, together with terminal expenses up to 108 United States dollars per traveller, in convertible currency, provided that the traveller submits proof of having incurred such expenses.

"3. The Government will provide for the Meeting adequate facilities including personnel resources, space and office supplies as described in the attached annex.

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

ing 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.

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

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

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

"6. The rooms, offices and related localities and facilities put at the disposal of the Meeting by the Government shall be the Meeting Area which will constitute United Nations Premises within the meaning of article II, section 3, of the Convention of 13 February 1946.

"7. The Government shall notify the local authorities of the convening of the Meeting and request appropriate protection.

"8. Any dispute concerning the interpretation or implementation of the arrangements, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement, will, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them, appoint the Chairman, then such arbitrator will be nominated by the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal will adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance will be final and, even if rendered in default of one of the parties, be binding on both of them."

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

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

II

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

25 February 1994

With reference to your letter of 23 February 1994 concerning the Meeting of the Signatories to the Convention on the Transboundary Effects of Industrial Accidents, to be held at Budapest from 23 to 25 March 1994, I have the honour to inform you that the Government of Hungary gave its consent to the conditions of the proposed agreement.

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

(*Signed*) György BOYTHA
Permanent Representative

(*q*) Exchange of letters constituting an agreement between the United Nations and the Government of Cyprus concerning of arrangements for the Meeting of Experts on Human Settlements Problems in Southern Europe, of the Economic Commission for Europe, to be held at Nicosia from 6 to 8 June 1994.[27] Geneva, 26 May and 1 June 1994

I

LETTER FROM THE UNITED NATIONS

26 May 1994

I have the honour to give you below the text of arrangements between the United Nations and Government of Cyprus (hereinafter referred to as "the Government") in connection with the Meeting of Experts on Human Settlements Problems in Southern Europe, of the Economic Commission for Europe, to be held, at the invitation of the Government, at Nicosia from 6 to 8 1994.

"Arrangements between the United Nations and Government of Cyprus regarding the Meeting of Experts on Human Settlements Problems in Southern Europe, of the Economic Commission for Europe, to be held at Nicosia from 6 to 8 1994.

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

"2. In accordance with paragraph 17 of General Assembly resolution 47/202A of 22 December 1992, the Government will assume responsibility for any supplementary expenses arising directly or indirectly from the Meeting, namely;

(*a*) To supply to all United Nations staff members who are to be brought to Nicosia, air tickets, economy class, Geneva-Nicosia-Geneva, to be used on the airlines that cover this itinerary;

(*b*) To supply vouchers for air freight and the excess baggage for documents and the records; and

(*c*) To pay to all staff, on their arrival in Cyprus, according to United Nations rules and regulations, a subsistence allowance in local currency at the Organization's official daily rate applicable at the time of the Meeting, together with terminal expenses up to 108 United States dollars per traveller, in convertible currency, provided that the traveller submits proof of having incurred such expenses.

"3. The Government will provide for the Meeting adequate facilities including personnel resources, space and office supplies as described in the attached an annex.

"4. The Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of: (i) injury to person or damage to property in conference or office premises provided for the 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 personal harmless in respect of any such action, claim or other demand.

"5. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which Cyprus is a party, shall be applicable to the Meeting, in particular:

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

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

"6. The rooms, offices and related localities and facilities put at the disposal of the Meeting by the Government shall be the Meeting Area which will constitute United Nations Premises within the meaning of article II, section 3, of the Convention of 13 February 1946.

"7. The Government shall notify the local authorities of the convening of the Meeting and request appropriate protection.

"8. 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, will, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom will be appointed by the Secretary-General of the United Nations, one by the Government and the third, who will be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the name of its arbitrator or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them, appoint the Chairman, than such arbitrator will be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the parties, the tribunal will adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance will be final and, even if rendered in default of one of the parties, be binding on both of them.

"9. These arrangements will also apply to the Technical Visits which are being organized in conjunction with the Meeting on 4 and 5 June 1994."

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

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

II

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

1 June 1994

I have the honour to acknowledge receipt of your letter of 26 May 1994 (Ref. G/LE-311/21 (CYPRUS)) containing the text of:

"Arrangements between the United Nations and the Government of Cyprus regarding the Meeting of Experts on Human Settlements Problems in Southern Europe, of the Economic Commission for Europe, to be held at Nicosia from 6 to 8 June 1994"

I have the honour to inform you that my Government accepts the contents of your letter, and confirm that your letter and my reply shall constitute an agreement between the Government of the Republic of Cyprus and the United Nations which shall enter into force on the date of this letter and shall remain in force for the duration of the Meeting and for such additional period as is necessary for its preparation and winding-up.

(*Signed*) Nicolas D. MACRIS
Permanent Representative

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

Basic Cooperation Agreement between the United Nations (United Nations Children's Fund) and the Government of Bhutan.[28] Signed at Thimphu on 17 March 1994

Article II

SCOPE OF THE AGREEMENT

1. The present Agreement embodies the general terms and conditions under which UNICEF shall cooperate in programmes in the country.

2. UNICEF cooperation in programmes in the country shall be provided consistent with the relevant resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including the Executive Board of UNICEF.

Article IV

UNICEF OFFICE

1. UNICEF may establish and maintain a UNICEF office in the country as the Parties may consider necessary to facilitate the implementation of the programmes of cooperation.

2. UNICEF may, with the agreement of the Government, establish and maintain a regional/area office in the country to provide programme support to other countries in the region/area.

3. In the event the UNICEF does not maintain a UNICEF office in the country, it may, with the agreement of the Government, provide support for programmes of cooperation agreed to between UNICEF and the Government under the present Agreement through a UNICEF regional/area office established in another country.

Article IX

Applicability of the Convention

The Convention shall be applicable *mutatis mutandis* to UNICEF, its office, property, funds and assets and to its officials and experts on mission in the country.

Article X

Legal status of UNICEF office

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

2. (*a*) The premises of the UNICEF office shall be inviolable. The property and assets of UNICEF, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action;

(*b*) The appropriate authorities shall not enter the office premises to perform any official duties, except with the express consent of the head of the office and under conditions agreed to by him or her.

3. The appropriate authorities shall exercise due diligence to ensure the security and protection of the UNICEF office, and to ensure that the tranquility of the office is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

4. The archives of UNICEF, and in general all documents belonging to it, wherever located and by whomsoever, held, shall be inviolable.

Article XI

UNICEF funds, assets and other property

1. Without being restricted by financial controls, regulations or moratoria of any kind:

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

(*b*) UNICEF shall be free to transfer its funds, gold or currency from one country to another or within any country, to other organizations and agencies of the United Nations system;

(*c*) UNICEF shall be accorded the most favourable, legally available rate of exchange for its financial activities.

2. UNICEF, its assets, income and other property shall:

(*a*) Be exempt from all direct taxes, value-added tax, fees, tolls or duties; it is understood, however, that UNICEF will not claim exemption from taxes which are, in fact, no more than charges for public utility services, rendered by the Government or by a corporation under government regulation at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized;

(*b*) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by UNICEF for its official use. It is understood, however, that articles imported under such exemptions will not be sold in the country into which they were imported except under conditions agreed with the Government;

(*c*) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publication.

Article XII

GREETING CARDS AND OTHER UNICEF PRODUCTS

Any materials imported or exported by UNICEF or by national bodies duly authorized by UNICEF to act on its behalf, in connection with the established purposes and objectives of the UNICEF Greeting Card Operation, shall be exempt from all customs duties, prohibitions and restrictions, and the sale of such materials for the benefit of UNICEF shall be exempt from all national and local taxes.

Article XIII

UNICEF OFFICIALS

1. Officials of UNICEF shall:

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

(*b*) Be exempt from taxation on the salaries and emoluments paid to them by UNICEF;

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

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

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

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

(*g*) Have the right to import free of duty their furniture, personal effects and all household appliances, at the time of first taking up their post in the host country.

2. The head of the UNICEF office and other senior official, as may be agreed between UNICEF and the Government, shall enjoy the same privileges and immunities accorded by the Government to members of diplomatic missions of comparable ranks. For this purpose, the name of the head of the office may be incorporated in the diplomatic list.

3. UNICEF officials shall also be entitled to the following facilities applicable to members of diplomatic missions of them comparable ranks:

(*a*) To import free of custom and excise duties limited quantities or certain articles intended for personal consumption in accordance with existing government regulation.

(*b*) To import a motor vehicle free of customs and excise duties, including value-added tax, in accordance with existing government regulation.

Article XIV

EXPERTS ON MISSION

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

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

Article XV

PERSONS PERFORMING SERVICES FOR UNICEF

1. Persons performing services for UNICEF shall:

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

(*b*) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.

2. For the purpose of enabling them to discharge their functions independently and efficiently, persons performing services for UNICEF may be accorded such other privileges, immunities and facilities as specified in article XIII above, as may be agreed upon between the Parties.

Article XVI

ACCESS FACILITIES

1. UNICEF officials, experts on mission of persons performing services for UNICEF shall be entitled:

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

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

Article XVIII

Locally recruited personnel assigned to hourly rates

The terms and conditions of employment for persons recruited locally and assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including UNICEF. Locally recruited personnel shall be accorded all facilities necessary for the independent exercise of their functions for UNICEF.

Article XVIII

Facilities in respect of communication

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

2. No official correspondence or other communication of UNICEF shall be subjected to censorship. Such immunity shall extend to printed matter, photographic and electronic data communications and other forms of communications as may be agreed upon between the Parties. UNICEF shall be entitled to use codes and to dispatch and receive correspondence either by courier or in sealed pouches, all of which shall be inviolable and not subject to censorship.

3. UNICEF shall have the right to operate radio and other telecommunication equipment on United Nations registered frequencies and those allocated by the Government between its offices, within and outside the country, and in particular with UNICEF headquarters in New York.

4. UNICEF shall be entitled, in the establishment and operation of its official communications, to the benefits of the International Telecommunications Convention (Nairobi, 1982)[29] and the regulations annexed thereto.

Article XIX

Facilities in respect of means of transportation

The Government shall grant UNICEF necessary permits or licenses for, and shall not impose undue restrictions on, the acquisition or use and maintenance by UNICEF of civil aeroplanes in accordance with government regulations, and other craft required for programme activities under the present Agreement.

Article XX

WAIVER OF PRIVILEGES AND IMMUNITIES

The privileges and immunities accorded under the present Agreement are granted in the interest of the United Nations, and not for the personal benefit of the persons concerned. The Secretary-General of the United Nations has the right and the duty to waive the immunity of any individual referred to in articles XIII, XIV and XV in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of the United Nations and UNICEF.

Article XXI

CLAIMS AGAINST UNICEF

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

2. The Government shall, in particular, be responsible for dealing with all claims arising from or directly attributable to the operations under the present Agreement that may be brought by third parties against UNICEF, UNICEF officials, experts on mission on 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.

Similar agreements were made between the United Nations (United Nations Children's Fund) and the Governments of: Barbados (signed at Barbados on 23 September 1994)[30], Botswana (signed at Gabonne on 21 March 1994)[31], Burkina Faso (signed at Ougadougou on 1 November 1994)[32], Cambodia (signed at Phnom Penh on 1 June 1994)[33], Central African Republic (signed at Bangui on 1 July 1994)[34], Comoros (signed at Moroni on 1 July 1994)[35], Ethiopia (signed at New York on 25 February 1994)[36], Guyana (signed at Georgetown on 3 March 1994)[37], Mongolia (signed at Ulaanbaatar on 8 February 1994)[38], Papua New Guinea (signed at Waigain on 9 March 1994)[39], Sudan (signed at Khartoum on 4 August 1994)[40], the former Yugoslav Republic of Macedonia (signed at Skopje on 8 December 1994)[41], United Republic of Tanzania (signed at Dar es Salaam on 26 September 1994)[42], and Yemen (signed at Sana's on 12 January 1994)[43].

4. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME

Basic Agreement between the United Nations (United Nations Development Programme) and the Government of Eritrea concerning assistance by the United Nations Development Programme to the Government of Eritrea.[44] Signed at Asmara on 11 June 1994

Article IX

PRIVILEGES AND IMMUNITIES

1. The Government shall apply to the United Nations and its organs, including UNDP and United Nations subsidiary organs acting as UNDP Executing Agencies, their property, funds and assets and to their own officials, including the resident representative and other members of the UNDP mission in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations and the provisions of the Agreement between the and the United Nations and the Government of the State of Eritrea relating to the Establishment of a United Nations Integrated Office.

2. The Government shall apply to each specialized agency acting as an Executive Agency, its property, funds and assets, and to its officials, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies, including any Annex to the Convention applicable to such Specialized Agency. In case the International Atomic Energy Agency acts as an Executing Agency, the Government shall apply to its property, funds and assets, and to its officials and experts, the Agreement on the Privileges and Immunities of IAEA.

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

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

(*b*) For purposes of the Instrument on privileges and immunities referred to in the preceding parts of this article:

(i) All papers and documents relating to a project in the possession or under the control of the persons referred to in sub paragraph 4(a) above shall be deemed to be documents belonging to the United Nations, the special agency concerned or the IAEA, as the case may be; and

(ii) Equipment, materials and supplies brought into or purchased or leased by those persons within the country for purposes of a project shall be deemed to be property of the United Nations, the specialized agency concerned, or IAEA, as the case may be.

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

Article X

FACILITIES FOR EXECUTION OF UNDP ASSISTANCE

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

(*a*) Prompt clearance of experts and other persons performing services on behalf of UNDP or an Executing Agency;

(*b*) Prompt issuance without cost of necessary visas, licences or permits:

(*c*) Access to the site of work and all necessary rights of way;

(*d*) Free movement within or to or from the country, to the extent necessary for proper execution of UNDP assistance;

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

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

(*g*) Any permits necessary for importation of property belonging to and intended for the personal use or consumption of officials of UNDP, its Executing Agencies, or other persons performing services on their behalf, and for the subsequent exportation of such property; and

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

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

Similar agreements were made between the United Nations (United Nations Development Programme) and the Government of: Kazakhstan (signed an New York on 4 October 1994)[45], Marshall Islands (signed at Majuro on 14 January 1994)[46], and South Africa (signed at New York on 3 October 1994)[47].

5. AGREEMENTS RELATING TO THE UNITED NATIONS ENVIRONMENT PROGRAMME

Agreement between the United Nations (United Nations Environment Programme) and the Government of Canada constituting a Memorandum of Understanding regarding the arrangements for the meeting of Government-designated experts focusing on the 1985 Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-based Sources, Montreal, 6 to 10 June 1994.[48] Signed at Nairobi on 9, 11 and 26 May 1994.

1. The participants in the meeting will be invited by the Executive Director of the United Nations Environment Programme and will include:

(*a*) Representatives of States;

(*b*) Organizations that have received standing invitations from UNEP to participate in the meeting in the capacity of observers, and national liberation movements;

(*c*) Specialized and related agencies of the United Nations;

(*d*) Other intergovernmental organizations;

(*e*) Intergovernmental organs of the United Nations;

(*f*) Non-governmental organizations;

(*g*) The UNEP secretariat;

(*h*) Other persons invited by UNEP.

2. The Executive Director of UNEP will designate the officials of UNEP and the United Nations assigned to attend the meeting for the purpose of servicing them.

3. The meeting will be open to representatives of information media accredited by UNEP at its discretion after consultation with the Government.

4. The Government shall provide, for the duration of the meeting, the necessary premises, including office space, working areas and other related facilities, as specified in Annex A hereto. The Government shall at its expense furnish, equip and maintain in good repair all these premises and facilities in a manner that UNEP considers adequate for the effective conduct of the meeting. The meeting room shall be equipped for reciprocal simultaneous interpretation between three languages, and for sound recording from the floor to the extent required by UNEP. The premises shall remain at the disposal of UNEP 24 hours a day from 1 day prior to the meeting until 1 day after the closure of the meeting.

5. The Government shall provide, if possible within that conference area, a bank, post office, telephone, telefax and telex facilities, as well as appropriate eating facilities sufficient for the number of delegates and conference staff, a travel agency and a first aid centre.

6. The Government shall bear the cost of all necessary utility services, incurred as a result of the meeting including local telephone communications, of the secretariat of the meeting and its communications by telex, telefax or telephone with

UNEP headquarters in Nairobi when such communications are authorized by or on behalf of the secretary of the meeting.

7. The Government shall bear the cost of transport and insurance charges, from the United Nations Environment Programme headquarters in Nairobi to the site of the meeting and return, of UNEP equipment and supplies required for the adequate functioning of the meeting. UNEP will determine the mode of shipment of such equipment and supplies having regard to the need for economy but with first regard to the needs of the meeting.

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

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

10. The Government shall ensure the availability of transport between the local airport and the conference area and principle hotels for members of the UNEP secretariat servicing the meeting upon their arrival and departure.

11. The Government shall ensure the availability of transport for all participants and those attending the meeting between the local airport, the principal hotels and the conference area.

12. The Government shall provide an adequate number of cars with drivers for official use by the principal officers of the meeting.

13. The Government will furnish such police protection as may be required to ensure the effective functioning of the meeting in an atmosphere of security and tranquility free from interference of any kind.

14. The Government shall appoint a liaison officer who shall be responsible, in consultation with UNEP, for making and carrying out the administrative and personnel arrangements for the meeting.

15. The Government shall recruit and provide an adequate number of local support personnel necessary for the proper functioning of the meeting. The exact requirements in this respect are specified in annex B hereto. UNEP will provide the staff specified in annex C hereto.

16. The Government, in addition to the financial obligations provided for elsewhere in this Memorandum of Understanding and its attached annexes, shall, in accordance with General Assembly resolution 31/140, section 1, paragraph 5, bear the actual additional meeting costs directly or indirectly involved in holding the meeting in Montreal, Canada, rather than at New York where the nearest established at headquarters of the United Nations is located. Upon receipt of confirmation of your agreement to the terms and conditions as set out in this Memorandum of Understanding, UNEP will transfer to the Government the sum US$ 31,100 to cover the costs of the meeting as reflected in annex D.

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

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

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

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

18. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946. to which Canada is a party, shall be applicable in respect of the meeting. In particular, the representatives of States and of the intergovernmental organs referred to in paragraph 1(a) above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations and its specialized or related agencies performing functions in connection with the meeting referred to in paragraph 1(f) and paragraph 2 above, shall enjoy 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 meeting shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

19. The representatives or observers referred to in paragraph 1(b), (d), (e) 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 meeting.

20. 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.

21. Without prejudice to the preceding paragraphs, 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.

22. All persons referred to in paragraph 1 above will have the issuance of their entry visas into Canada facilitated. There are no exit permit requirements in Canada nor are there controls during the transit to and from the conference area by the Canadian authorities. All visas will be granted free of charge. The visas will be issued as quickly as possible. All applications should be forwarded at least ten working days before the day of travel. Applications received later will be processed in the most efficient manner and visas will be issued as soon as possible with a minimum delay. Representatives who need entry visas for Canada, but who are travelling without one, will be required to obtain their visas "en route" at a Canadian Mission. Arrangements will be made to inform the Ports of Entry of the meeting and recommendations will be made to grant admission for the duration of the meeting. Participants should be aware that entry visas cannot be obtained at a port of entry.

23. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the meeting premises specified in paragraph 4 above shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall inviolable for the duration of the meeting, including the preparatory stage and the winding-up.

24. 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 and equipment necessary for the meeting. It shall issue without delay any necessary import and export permits for this purpose.

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

A Memorandum of Understanding between the United Nations (United Nations Environment Programme) and the Government of the Republic of Korea regarding Intergovernmental Meeting on the North-West Pacific Action Plan and Expert's Meeting, Seoul, 12 to 14 September 1994, was also concluded on 5 August 1994 at Nairobi.[49]

6. AGREEMENTS RELATING TO THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

(*a*) Agreement between the United Nations (United Nations High Commissioner for Refugees) and the Government of Slovakia concerning the legal status, immunities and privileges of the Office of the United Nations High Commissioner for Refugees and its personnel in Slovakia.[50] Signed at Bratislava or 1 March 1994

Article IV

UNHCR OFFICE

1. The Government welcomes that UNHCR establish and maintain an office in the country for providing international protection and humanitarian assistance to refugees and other persons of concern to UNHCR.

2. UNHCR may designate with the consent of the Government, the UNHCR office in the country to serve as a regional/area office and the government shall be notified in writing of the number and level of the officials assigned to it.

3. The UNHCR office will exercise functions assigned by the High Commissioner, in relation to his mandate for refugees and other persons of his concern, including the establishment and maintenance of relations between UNHCR and other governmental or non-governmental organizations functioning in the country.

Article V

UNHCR PERSONNEL

1. UNHCR may assign to the office in the country such officials or other personnel as UNHCR deems necessary for carrying out its international protection and humanitarian assistance functions.

2. The Government shall be informed of the category of the officials and other personnel to be assigned to the UNHCR office in the country.

3. UNHCR may designate officials to visit the country for purposes of consulting and cooperating with the corresponding officials of the Government or other parties involved in refugee work in connection with: (a) the review, preparation, monitoring and evaluation of international protection and humanitarian assistance programmes; (b) the shipment, receipt, distribution or use of the supplies, equipment, and other materials, furnished by UNHCR; (c) seeking permanent solutions for the problem of refugees; and (d) any other matters relating to the application of this Agreement.

Article VI

Facilities for implementation of UNHCR humananitarian programmes

1. The Government, in agreement with UNHCR, shall take any measure which may be necessary to exempt UNHCR officials, experts on mission and persons performing services on behalf of UNHCR from regulations or other legal provisions which may interfere with operations and projects carried out under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of UNHCR humanitarian programmes for refugees in the country. Such measures shall include the authorization to operate, free of licence fees, UNHCR radio and other telecommunications equipment; the granting of air traffic rights and the exemption from aircraft landing fees and royalties for emergency relief cargo flights, transportation of refugees and/or UNHCR personnel.

2. The Government, in agreement with UNHCR, shall assist the UNHCR officials in finding appropriate office premises, and shall put them at the disposal of UNHCR free of charge, or at a nominal rent.

3. The Government, in agreement with UNHCR, shall make arrangements and provide funds up to a mutually agreed amount, to cover the cost of local services and facilities for the UNHCR office, such as establishment, equipment, maintenance and rent, if any, of the office.

4. The Government shall ensure that the UNHCR office is at all times supplied with the necessary public services, and that such public services are supplied on equitable terms.

5. The Government shall take the necessary measures, when required, to ensure the security and protection of the premises of the UNHCR office and its personnel.

6. The Government shall facilitate the location of suitable housing accommodation for UNHCR personnel recruited internationally.

Article VII

Privileges and immunities

1. The Government shall apply to UNHCR, its property, funds and assets, and to its officials and experts on mission the relevant provisions of the Convention on the Privileges and Immunities of the United Nations, to which the Government became a party on 1 January 1993.

2. Without prejudice to paragraph 1 of this article, the Government shall in particular extend to UNHCR the privileges, immunities, rights and facilities provided in articles VIII to XV of this Agreement.

Article VIII

UNHCR OFFICE, PROPERTY, FUNDS, AND ASSETS

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

2. The premises of UNHCR office shall be inviolable. The property, funds and assets of UNHCR, wherever situated and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action;

3. The archives of UNHCR, and in general all documents belonging to held by it, shall be inviolable;

4. The funds, assets, income and other property of UNHCR shall be exempt from:

(*a*) Any form of direct taxation, provided that UNHCR will not claim exemption from charges for public utility services;

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

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

5. Any materials imported or exported by UNHCR, by national or international bodies duly accredited by UNHCR to act on its behalf in connection with humanitarian assistance for refugees, shall be exempt from all customs duties and prohibitions and restrictions.

6. UNHCR shall not be subject to any financial controls, regulations or moratoria and may freely:

(*a*) Acquire from authorized commercial agencies, hold and use negotiable currencies, maintain foreign-currency accounts, and acquire through authorized institutions, hold and use funds, securities and gold;

(*b*) Bring funds, securities, foreign currencies and gold into the host country from any other country, use them within the host country or transfer them to other countries,

7. UNHCR shall enjoy the most favourable legal rate of exchange.

Article IX

COMMUNICATION FACILITIES

1. UNHCR shall enjoy, in respect of its official communications, treatment not less favorable than that accorded by the Government to any other Government including its diplomatic missions or to other intergovernmental, international orga-

nizations in matter of priorities, tariffs and charges on mail, cablegrams, telephotos, telephone, telegraph, telex and other communications, as well as rates for information to the press and radio.

2. The Government shall secure the inviolability of the official communications and correspondence of UNHCR and shall not apply any censorship to its communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, films and sound recordings.

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

4. UNHCR shall have the right to operate radio and other telecommunications equipment, on United Nations registered frequencies, and those allocated by the Government, between its offices, within and outside the country, and in particular with UNHCR headquarters in Geneva.

Article X

UNHCR OFFICIALS

1. The UNHCR Representative, Deputy Representative and other senior officials, as may be agreed between UNHCR and the Government, shall enjoy, while in the country, in respect of themselves, their spouses and dependent relatives the privileges and immunities, exemptions and facilities normally accorded to diplomatic envoys. For this purpose the Ministry of Foreign Affairs shall include their names in the Diplomatic List.

2. UNHCR officials, while in the country, shall enjoy the following facilities, privileges and immunities:

(*a*) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, such immunity to continue even after termination of employment with UNHCR;

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

(*c*) Immunity from any military service obligations or any other of obligatory service;

(*d*) Exemption, with respect to themselves, their spouses, their relatives dependent on them and other members of their households from immigration restrictions and alien registration;

(*e*) Exemption from taxation in respect of the salaries and all other remuneration paid to them by UNHCR;

(*f*) Exemption from any form of taxation on income derived by them from sources outside the country;

(*g*) Prompt clearance and issuance, without cost, of visas, licences or permits (e.g. for communication facilities), if required and free movement within, to or from the country to the extent necessary for the carrying out of UNHCR international protection and humanitarian assistance programmes;

(*h*) Freedom to hold or maintain within the country, foreign exchange, foreign currency accounts and movable property and the right upon termination of employment with UNHCR to take out of the host country their funds for the lawful possession of which they can show good cause;

(*i*) The same protection and repatriation facilities with respect to themselves, their spouses and relatives dependent on them and other members of their households as are accorded in time of international crisis to diplomatic envoys;

(*j*) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

(i) Their furniture and personal defects in one or more separate shipments and thereafter to import necessary additions to the same, including motor vehicles, according to the regulations applicable in the country to diplomatic representatives accredited in the country and/or resident members of international organizations;

(ii) Reasonable quantities of certain articles for personal use or consumption and not for gift or sale.

3. UNHCR officials who are nationals of or permanent residents in the host country shall enjoy only those privileges and immunities provided for in the Convention.

Article XI

Locally recruited personnel

1. Persons recruited locally and assigned to hourly rates to perform services for UNHCR shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity.

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

Article XII

Experts on Mission

1. Experts performing mission for UNHCR shall be accorded such facilities, privileges and immunities as are necessary for the independent exercise of their functions. In particular they shall be accorded:

(*a*) Immunity from personal arrest or detention;

(*b*) Immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. This immunity shall continue to be accorded notwithstanding that they are no longer employed on missions for UNHCR;

(*c*) Inviolability for all papers and documents;

(*d*) For the purpose of their official communications, the right to use codes and to receive papers on correspondence by courier or in sealed bags;

(*e*) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(*f*) The same immunities and facilities including immunity from inspection and seizure in respect of their personal baggage as are accorded to diplomatic envoys.

Article XIII

PERSONS PERFORMING SERVICES ON BEHALF OF UNHCR

1. Except as the Parties may otherwise agree, the Government shall grant to all persons performing services on behalf of UNHCR, other than nationals of the host country employed locally, the privileges and immunities specified in article V, section 18, of the Convention. In addition, they shall be granted:

(*a*) Prompt clearance and issuance, without cost, of visas, licences or permits (e.g. for communication facilities) necessary for the effective exercise of their functions;

(*b*) Free movement within, to or from the country, to the extent necessary for the implementation of the UNHCR humanitarian programmes.

Article XIV

NOTIFICATION

1. UNHCR shall notify the Government of the names of UNHCR officials, experts on mission and other persons performing services on behalf of UNHCR, and of changes in the status of such individuals.

2. UNHCR officials, experts on mission and other persons performing services on behalf of UNHCR shall be provided with a special identity card certifying their status under this Agreement.

Article XV

WAIVER OF IMMUNITY

Privileges and Immunities are granted to UNHCR personnel in the interest of the United Nations and UNHCR and not for the personal benefit of the individuals concerned. The Secretary-General of the United Nations may waive the immunity of any of UNHCR personnel in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations and UNHCR.

A similar of cooperation agreement was made between the United Nations (United Nations High Commissioner for Refugees) and the Government of Bosnia and Herzegovina (signed at Geneva on 18 March 1994)[51]

(*b*) Agreement between the United Nations (United Nations High Commissioner for Refugees) and the Government of Albania on the establishment of a UNHCR field office in Albania.[53] Signed at Tirana on 13 April 1994

Article VI

FACILITIES FOR IMPLEMENTATION OF UNHCR HUMANITARIAN PROGRAMMES

1. The Government, in agreement with UNHCR, shall take any measure which may be necessary to exempt UNHCR officials, experts on mission and persons performing services on behalf of UNHCR from regulations or other legal provisions which may interfere with operations and projects carried out under this agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of UNHCR humanitarian programmes for refugees in the country. Such measures shall include the authorization to operate, free of licence fees, UNHCR radio and other telecommunications equipment; the granting of air traffic rights and the exemption from aircraft landing fees and royalties for emergency relief cargo flights, transportation of refugees and/or UNHCR personnel.

2. The Government, in agreement with UNHCR, shall assist the UNHCR officials in finding appropriate office premises, and shall put them at the disposal of UNHCR free of charge, or at a nominal rent.

3. The Government, in agreement with UNHCR, shall make arrangements and provide funds up to a mutually agreed amount, to cover the cost of local services and facilities for the UNHCR office, such as establishment, equipment, maintenance and rent, if any, of the office.

4. The Government shall ensure that the UNHCR office is at all times supplied with the necessary public services, and that such public services are supplied on equitable terms.

5. The Government shall take the necessary measures, when required, to ensure the security and protection of the premises of the UNHCR office and its personnel.

6. The Government shall facilitate the location of suitable housing accommodation for UNHCR personnel recruited internationally.

Article VII

PRIVILEGES AND IMMUNITIES

1. The Government shall apply to UNHCR, its property, funds and assets, and to its officials and experts on mission the relevant provisions of the Convention on the Privileges and Immunities of the United Nations. 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 the international protection and humanitarian assistance functions of UNHCR.

2. Without prejudice to paragraph 1 of this article, the Government shall in particular extend to UNHCR the privileges, immunities, rights and facilities provided in articles VIII to XV of this Agreement.

Article VIII

UNHCR OFFICE, PROPERTY, FUNDS AND ASSETS

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

2. The premises of UNHCR office shall be inviolable. The property, funds and assets of UNHCR, wherever situated and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. The archives of UNHCR, and in general all documents belonging to or held by it, shall be inviolable.

4. The funds, assets, income and other property of UNHCR shall be exempt from:

(*a*) Any form of direct taxation, provided that UNHCR will not claim exemption from charges for public utility services;

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

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

5. Any materials imported or exported by UNHCR, by national or international bodies duly accredited by UNHCR to act on its behalf in connection with humanitarian assistance for refugees, shall be exempt from all customs duties and prohibitions and restrictions.

6. UNHCR shall not be subject to any financial controls, regulations or moratoriums and may freely:

(*a*) Hold all kinds of deposits, exchange leks or foreign-currency at banks or financial institutions, open accounts in leks or foreign-currency. In addition it may maintain at banks gold or other valuable metals, securities, or buy from and sell to the bank gold or other valuable metals.

(*b*) Bring foreign currency, gold or other valuable metals to the host country from other countries, use them within the host country or transfer them to other countries in accordance to the legislation of the host country, as consistent with the privileges and immunities otherwise provided for in this Agreement.

7. UNHCR shall enjoy the most favourable legal rate of exchange.

Article IX

COMMUNICATION FACILITIES

1. UNHCR shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other Government including its diplomatic missions or to other intergovernmental, international orga-

nizations in matter of priorities, tariffs and charges on mail, cablegrams, telephotos, telephone, telegraph, telex and other communications, as well as rates for information to the press and radio.

2. The Government shall secure the inviolability of the official communications and correspondence of UNHCR and shall not apply any censorship to its communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, films and sound recordings.

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

4. UNHCR shall have the right to operate radio and other telecommunications equipment, on registered frequencies, and those allocated by the Government, between its offices, within and outside the country, and in particular with UNHCR headquarters in Geneva.

Article X

UNHCR OFFICIALS

1. The UNHCR Representative, Deputy Representative and other senior officials as may be agreed between UNHCR and the Government shall enjoy, while in the country, in respect of themselves, their spouses and dependent relatives the privileges and immunities, exemptions and facilities normally accorded to diplomatic envoys. For this purpose the Ministry of Foreign Affairs shall include their names in the Diplomatic List.

2. UNHCR officials, while in the country, shall enjoy the following facilities, privileges and immunities:

(*a*) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, such immunity to continue even after termination of employment with UNHCR;

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

(*c*) Immunity from any military service obligations or any other obligatory service;

(*d*) Exemption, with respect to themselves, their spouses, their relatives dependent on them and other members of their households from immigration restriction and alien registration;

(*e*) Exemption from taxation in respect of the salaries and all other remuneration paid to them by UNHCR;

(*f*) Exemption from any form of taxation on income derived by them from sources outside the country;

(*g*) Prompt clearance and issuance, without cost, of visas, licences or permits, if required and free movement within, to or from the country to the extent necessary for the caring out of UNHCR international protection and humanitarian assistance programmes;

(*h*) Freedom to hold or maintain within the country, foreign exchange, foreign currency accounts and movable property and the right upon termination of employment with UNHCR to take out of the host country their funds for the lawful possession of which they can show good cause;

(*i*) The same protection and repatriation facilities with respect to themselves, their spouses and relatives dependent on them and other members of their households as are accorded in time of international crisis to diplomatic envoys;

(*j*) The right to import for personal use, free of duty in other levies, prohibitions and restrictions on imports:

(i) Their furniture and personal effects in one or more separates shipments and thereafter to import necessary additions to the same, including motor vehicles, according to the regulations applicable in the country to diplomatic representatives accredited in the country and/or resident members of international organizations;

(ii) Reasonable quantities of certain articles for personal use or consumption and not for gift or sale.

3. UNHCR officials who are nationals of or permanent residents in the hosts country shall enjoy only those privileges and immunities provided for in the Convention.

Article XI

LOCALLY RECRUITED PERSONNEL

1. Persons recruited locally and assigned to hourly rates to perform services for UNHCR shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity.

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

Article XII

EXPERTS ON MISSION

1. Experts performing mission for UNHCR shall be accorded such facilities, privileges and immunities as are necessary for the independent exercise of their functions. In particular they shall be accorded:

(*a*) Immunity from personal arrest or detention;

(*b*) Immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. This immunity shall continue to be accorded notwithstanding that they are no longer employed on missions for UNHCR;

(*c*) Inviolability for all papers and documents;

(*d*) For the purpose of their official communications, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*e*) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(*f*) The same immunities and facilities including immunity from inspection and seizure in respect of their personal baggage as are accorded to diplomatic envoys.

Article XIII

PERSONS PERFORMING SERVICES ON BEHALF OF UNHCR

Except as the Parties may otherwise agree, the Government shall grant to all persons performing services on behalf of UNHCR, other than nationals of the host country employed locally, the privileges and immunities specified in article V, section 18, of the Convention. In addition, they shall be granted:

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

(*b*) Free movement within, to or from the country, to the extent necessary for the implementation of the UNHCR humanitarian programmes.

Article XIV

NOTIFICATION

1. UNHCR shall notify the Government of the names of UNHCR official, experts on mission and other persons performing services on behalf of UNHCR, and of changes in the status of such individuals.

2. UNHCR officials, experts on mission and other persons performing service on behalf of UNHCR shall be provided with a special identity card certifying their status under this Agreement.

Article XV

WAIVER OF IMMUNITY

Privileges and Immunities are granted to UNHCR personnel in the interests of the United Nations and UNHCR and not for the personal benefit of the individuals concerned. The Secretary-General of the United Nations may waive the immunity of any of UNHCR personnel in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations and UNHCR.

Article XVI

SETTLEMENT OF DISPUTES

Any dispute between UNHCR and the Government arising out of or relating to this Agreement shall be settled amicably by negotiation or other agreed mode of settlement, failing which such dispute shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within

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

Similar agreements were made between the United Nations (United Nations High Commissioner for Refugees) and the Governments of: Benin (signed at Cotonou on 15 November 1994)[53], Cambodia (signed at Phnom Penh on 13 September 1994)[54], Ghana (signed at Accra on 16 November 1994)[55], and Uganda (signed at Kampala on 2 September 1994)[56]

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.[57] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

In 1994, 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 the accession or notification*	*Specialized Agencies*
Russian Federation	29 June 1994 (notification)	IMF, IBRD, IFC, IDA

As of 31 December 1994, 102 States were parties to the Convention.[58]

2. AGREEMENT BETWEEN THE UNITED NATIONS, THE INTERNATIONAL LABOUR ORGANISATION, THE WORLD HEALTH ORGANIZATION AND SWEDEN REGARDING THE ARRANGEMENTS FOR THE INTERNATIONAL CONFERENCE ON CHEMICAL SAFETY TO BE HELD AT STOCKHOLM FROM 25 TO 29 APRIL 1994. SIGNED AT GENEVA ON 21 APRIL 1994[59]

Article X

LIABILITY

1. The Government shall be responsible for dealing with any claim against the Organizations or their officials, arising out of:

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

(*b*) Injury or damage to persons, or 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 control of the Government;

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

2. The Government shall hold harmless the Organizations, and their officials, in respect of any such claim, resulting from the performance of the services under this Agreement, except where it is agreed by the heads of the organizations, and the Government, that such claims arise from gross negligence or wilful misconduct of such persons.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (hereinafter referred to as "the United Nations Convention"), and the Convention on the Privileges and Immunities of Specialized Agencies of 21 November 1947 (hereinafter referred to as "the Specialized Agencies Convention), to which Sweden is a Party, shall be applicable in respect of the Conference. In particular, the representatives of States and of the intergovernmental organs referred in an article II, paragraph 1(a) and (e), above shall and enjoy the privileges and immunities provided under articles IV of the United Nations Convention, and V of the Specialized Agencies Convention as appropriate, the officials of the Organizations performing functions in connection with the Conference referred to in article II, paragraphs 1(g) and 2, above, shall enjoy the privileges and immunities provided under articles V and VII of the United Nations Convention, and VI and VIII of the Specialized Agencies Convention as appropriate, and any experts on mission for the United Nations, the International Labour Organization, or the World Health Organization, in connection what the Conference shall enjoy the privileges and immunities provided under articles VI annd VII of the United Nations Convention, or the applicable annexes to the Specialized Agencies Convention, as the case may be.

2. The representatives or observers referred to in article II, paragraph 1(b), (d) and (h) above shall be considered by the Organizations as experts on mission in connection with the Conference and shall enjoy the privileges and immunities under articles VI and VII of the United Nations Convention and the applicable annexes to the Specialized Agencies Convention.

3. The personnel provided by the Government under article VIII above shall enjoy immunity from legal processes 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, paragraphs 1, above shall enjoy the privileges and immunities provided by the Specialized Agencies Convention to the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

5. Without prejudice to the provisions of the United Nations Convention and of the Specialized Agencies Convention, all participants and persons performing functions in connection with the Conference shall enjoy the facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Conference.

6. The observers from the non-governmental organizations referred to in article II, paragraph 1(f), and the representatives of information media referred to in article II, paragraph 3, above shall be accorded the appropriate facilities necessary for the independent exercise of their functions in connection with the Conference.

7. All persons referred to in article II shall have the right of entry into and exit from Sweden, 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 as speedily as possible and free of charge. Arrangements shall also be made to ensure that visas for the duration of the Conference are delivered at Arlanda Airport, to participants who were unable to obtain them prior to their arrival.

8. For the purposes of the United Nations Convention, 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 Organizations. The premises shall be inviolable for the duration of the Conference, including the preparatory stage and the winding-up.

9. The Government shall allow the temporary importation, tax-free and duty-free, of all equipment, including 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.

Article XII

In addition to the Conference, the present Agreement shall be applicable to the pre-conference events taking place in Sweden on 23 and 24 April 1994.

3. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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

Agreements concerning specific sessions held outside FAO headquarters, containing provisions on privileges and immunities of FAO and participants similar to the standard text (published in *Juridical Yearbook*, *1972*, p. 32), were concluded in 1995 with the Governments of the following countries acting as hosts to such sessions: Brazil, Canada, Cyprus, Dominica, France*, Germany*, Honduras, Indonesia, Morocco, Oman, Pakistan, Philippines, Romania, Somoa, Senegal, Slovenia, South Africa, Spain*, Tunisia, Turkey, United Republic of Tanzania, and Venezuela.[60]

Non-member nation: The Russian Federation

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

Agreements concerning specific training activities, containing provisions on privileges and immunities of FAO and participants similar to the standard text (published in *Juridical Yearbook, 1972*, p. 33), were concluded in 1994 with the Governments of the following countries acting as hosts to such training activities: Brazil, Kenya, Slovenia and Syrian Arab Republic.

4. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to conferences, seminars and other meetings.

The following clauses were used in agreements between UNESCO and member States concerning UNESCO meetings organized in those States during 1994:

"Privileges and immunities

The Government of (member State) shall apply, in all matters relating to this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations as well as annex IV thereof, to which (member State) has been party since (applicable date). In particular, the Government shall ensure that no restriction is placed upon the entry into, sojourn in and departure from the territory of (member State) of all persons, of whatever nationality, entitled to attend the meeting by virtue of a decision of the appropriate authorities of UNESCO and in accordance with the Organization's 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 (member State) shall bear the risk of damage to the premises, facilities and furniture and shall assume and bear all responsibility and liability for accidents that may occur to persons present therein. However, the authorities of (member State) shall be entitled adopt appropriate measures to ensure the protection, particularly against fire and other risks, of the above-mentioned premises, facilities, furniture and persons. They may claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization."

5. WORLD HEALTH ORGANIZATION

Basic Agreement between the World Health Organization and Eritrea for the establishment of technical advisory cooperation relations. Signed at Brazzaville on 25 November 1994 and at Asmara on 20 December 1994.[61]

Article I

ESTABLISHMENT OF TECHNICAL ADVISORY COOPERATION

1. The Organization shall establish technical advisory cooperation with the Government, subject to budgetary limitation or the availability of the necessary funds. The Organization and the Government shall cooperate in arranging, on the basis of the requests received from the Government and approved by the Organization, mutually agreeable plans of operation for the carrying out of the technical advisory cooperation.

2. Such technical advisory cooperation shall eb established in accordance with the relevant resolutions and decisions of the World Health Assembly, the Executive Board and other organs of the Organization.

. . .

5. Any technical equipment or supplies which may be furnished by the Organization shall remain its property unless and until such time as title may be transferred in accordance with the policies determined by the World Health Assembly and existing at the date of transfer.

6. The Government shall be responsible for dealing with any cliams which may be brought by third parties against the Organization and its advisers, agents and employees and shall hold harmless the Organization and its advisers, agents and employees in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Government and the Organization that such claims or liabilities rise from the gross negligence or wilful misconduct of such advisers, agent or employees.

. . .

Article III

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE ORGANIZATION

1. The Organization shall defray, in full or in part, as may be mutually agreed upon, the costs necessary to the technical advisory cooperation which are payable outside the country, as follows:

(*a*) The salaries and subsistence (including duty travel per diem) of the advisers;

(*b*) The cost of transportation of the advisers during their travel to and from the point of entry into the country;

(*c*) The cost of any other travel outside the country;

(*d*) Insurance of the advisers;

(*e*) Purchase and transport to and from the point of entry into the country of any equipment or supplies provided by the Organization;

(*f*) Any other expenses outside the country approved by the Organization.

2. The Organization shall defray such expenses in local currency as are not covered by the Government pursuant to article IV, paragraph 1, of this Agreement.

Article IV

ADMINISTRATIVE AND FINANCIAL OBLIGATIONS OF THE GOVERNMENT

1. The Government shall contribute to the cost of technical advisory cooperation by paying for, or directly furnishing, the following facilities and services:

(*a*) Local personnel services, technical and administrative, including the necessary local secretarial help, interpreters, translators and related assistance;

(*b*) The necessary office space and other premises;

(*c*) Equipment and supplies produced within the country;

(d) Transportation of personnel, supplies and equipment for official purposes within the country;

(*e*) Postage and telecommunications for official purposes;

(*f*) Facilities for receiving medical care and hospitalization by the international personnel.

2. The Government shall defray such portion of the expenses to paid outside the country as are not covered by the Organization, and as may be mutually agreed upon.

3. In appropriate cases the Government shall put at the disposal of the Organization such labour, equipment, supplies and other services or property as may be needed for the execution of its work and as may be mutually agreed upon.

Article V

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Government, insofar as it is not already bound to do so, shall apply to the Organization, its staff, funds, properties and assets the appropriate provisions of the Convention on the Privileges and Immunities of the Specialized Agencies.

2. Staff of the Organization, including advisers engaged by it as members of the staff assigned to carry out the purposes of this Agreement, shall be deemed to be official within the meaning of the above Convention. The WHO Representative appointed to Eritrea shall be afforded the treatment provided for under section 21 of the said Convention.

Similar agreements were also concluded between the World Health Organization and the Governments of: Bosnia and Herzegovina (signed at Geneva on 15 June 1994)[62], Estonia (signed at Geneva on 28 June 1994)[63], Kazakhstan (signed at Geneva on 12 December 1994)[64], Lithuania (signed at Geneva on 28 July 1994)[65], Micronesia (Federated States of) (signed at Manila on 25 November 1994 and at Pohnpei on 27 December 1994)[66], Republic of Moldova (signed at Geneva on 21 July 1994)[67], and Niue (signed at Kuala Lumpur on 21 September 1994)[68].

6. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

Basic Cooperation Agreement between the United Nations (United Nations Industrial Development Organization) and the Government of the Gambia. Signed at Vienna on 27 January 1994.[69]

Article III

UNIDO COUNTRY DIRECTOR IN THE REPUBLIC OF THE GAMBIA

1. UNIDO may appoint, where appropriate upon consultation with the United Nations Development programme, a UNIDO Country Director in the Republic of The Gambia. The Director shall be responsible for the industrial development operational activities of UNIDO at the country level. In the performance of his duties the Director shall be the principal channel of communication between the Government and UNIDO in matters pertaining to the formulation, implementation and evaluation of UNIDO assisted projects. The Director shall maintain liaison on behalf of UNIDO with the appropriate organs of the Government and shall coordinate his activities with those of the Resident Coordinator of the United Nations and of the Resident Representative of the United Nations Development Programme in the country.

2. The contributions of the Government to the support costs for the services of the Director shall be laid down in a supplementary agreement, which is hereby incorporated by reference and becomes part of this Agreement.

. . .

Article X

PRIVILEGES AND IMMUNITIES

1. The Government shall apply to UNIDO, including its organs, its property, funds, assets and its officials, including the UNIDO Country Director in the Republic of The Gambia and his staff in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations, except that if the Government has acceded in respect of UNIDO to the Convention on the Privileges and Immunities of the Specialized Agencies, the Government shall apply the provisions of the latter Convention, including any annex to that Convention applicable to UNIDO.

2. The Director and his staff in the country shall be granted such additional privileges and immunities as may be necessary for the effective exercise of their official functions. In particular, the Director shall enjoy the same privileges and immunities as the Government accords to diplomatic envoys in accordance with international law.

3. (*a*) Except as the Government and UNIDO may otherwise agree in Project Documents relating to specific projects, the Government shall grant all persons, other than Government nationals employed locally, performing services on behalf of UNIDO, who are not covered by paragraphs 1 and 2 above, the same privileges and immunities as are granted to officials under section 18 or 19, respectively, of the Convention on the Privileges and Immunities of the United Nations or of the Specialized Agencies, as applicable.

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

(i) All papers and documents relating to a project in the possession or under the control of the persons referred to in subparagraph 3(a) above shall be deemed to be documents belonging to UNIDO; and

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

4. The expression "persons performing services" as used in articles X, XI and XIV of this Agreement includes operational experts, volunteers, consultants and juridical as well as natural persons and their employees. It includes governmental or non-governmental organizations or firms which UNIDO may retain to implement or to assist in the implementation of UNIDO assistance to a project and their employees. Nothing in this Agreement shall be construed to limit the privileges, immunities or facilities conferred upon such organizations or firms or their employees in any other instrument.

Article XI

FACILITIES FOR IMPLEMENTATION OF UNIDO ASSISTANCE

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

(*a*) Prompt clearance of experts and other persons performing services on behalf of UNIDO;

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

(*c*) Access to the site of work and all necessary rights of way;

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

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

(f) Any permits necessary for the tax and duty-free importation of equipment, materials and supplies, and for their subsequent tax and duty-free exportation;

(*g*) Any permits necessary for tax and duty-free importation of property belonging to and intended for the personal use or consumption of officials of UNIDO, or of other persons performing services on its behalf, and for the subsequent tax and duty-free exportation of such property; and

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

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

7. INTERNATIONAL ATOMIC ENERGY AGENCY

Agreement between the International Atomic Energy Agency and Ukraine for the application of safeguards to all nuclear material in all peaceful nuclear activities of Ukraine. Signed at Vienna on 28 September 1994.[70]

Application of safeguards

Article 2

The Agency shall have the right and the obligation to ensure that safeguards will be applied, in accordance with the terms of this Agreement, on all nuclear material in all peaceful nuclear activities within the territory of Ukraine, under its jurisdiction or carried out under its control anywhere, for the exclusive purposes of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

Co-operation between Ukraine and the Agency

Article 3

Ukraine and the Agency shall cooperate to facilitate the implementation of the safeguards provided for in this Agreement.

…

Privileges and immunities

Article 10

Ukraine shall apply to the Agency (including its property, funds and assets) and to its inspectors and other officials, performing functions under this Agreement, the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.[71]

…

International responsibility

Article 17

Any claim by Ukraine against the Agency or by the Agency against Ukraine in respect of any damage resulting from the implementation of safeguards under this Agreement, other than damage arising out of a nuclear incident, shall be settled in accordance with international law.

…

Interpretation and application of the Agreement and settlement of disputes

Article 20

Ukraine and the Agency shall, at the request of either, consult about any question arising out of the interpretation or application of this Agreement.

Article 21

Ukraine shall have the right to request that any question arising out of the interpretation or application of this Agreement be considered by the Board. The Board shall invite Ukraine to participate in the discussion of any such question by the Board.

Article 22

Any dispute arising out of the interpretation or application of this Agreement, except a dispute with regard to a finding by the Board under article 19 or an action taken by the Board pursuant to such a finding, which is not settled by negotiation or another procedure agreed to by Ukraine and the Agency shall, at the request of either, be submitted to an arbitral tribunal composed as follows: Ukraine and the Agency shall each designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the Chairman. If, within thirty days of the request for arbitration, either Ukraine or the Agency has not designated an arbitrator, either Ukraine or the Agency may request President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on Ukraine and the Agency.

Agreements with similar provisions were concluded between the International Atomic Energy Agency and the Governments of: Croatia (signed at Vienna on 9 June 1994)[72] and Zambia (signed at Vienna on 22 September 1994)[73] concerning the application of safeguards in connection with the Treaty on the Non-Proliferation on Nuclear Weapons (with Protocol).

An agreement was also concluded between the International Atomic Energy Agency and the Government of India (signed at Vienna on 16 February 1994)[74] for the application of safeguards under INFCIRC/154, Part I, and under the agreements between India and the International Atomic Energy Agency contained in exchanges of letters dated 1 October and 1 December 1993.

NOTES

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

[2]For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General of the United Nations*. (United Nations publication, Sales No. E.95.V.5).

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

[4]Came into force provisionally on 29 July 1994.

[5]United Nations, *Treaty Series*, vol. 500, p. 95.

[6]Came into force on 14 June 1994.

[7]United Nations, *Treaty Series*, vol. 75, Nos. 970-973 p. 5.

[8]United Nations, *Treaty Series*, vol. 1125, p. 3 and 609.

[9]United Nations, *Treaty Series*, vol. 249, p. 215.

[10]Came into force on 29 July 1994.

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

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

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

[14]Ibid., vol. 334, p. 147.

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

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

[17]Based on General Assembly resolution 35/10 C, annex, para. 10.

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

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

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

[21]Came into force on 17 June 1994.

[22]Came into force on 7 April 1994.

[23]Came into force on 26 October 1994.

[24]Came into force on 29 April 1994.

[25]Came into force on 25 February 1994.

[26]ENVWA./R.54 and Add.1.

[27]Came into force on 1 June 1994.

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

[29]United Kingdom, *Treaty Series*, vol. 33. United Kingdom Cmnd. 9557.

[30]Came into force provisionally on 23 September 1994.

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

[32]Came into force provisionally on the date of signature.

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

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

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

[36]Came into force on 15 December 1994.

[37]Came into force on 12 November 1994.

[38]Came into force on 31 August 1994.

[39]Came into force on 20 October 1994.

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

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

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

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

[44]Came into force provisionally on the date of signature.[45]Came into force on the date of signature.

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

[47]Came into force provisionally on the date of signature.

[48]Came into force on 26 May 1994.

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

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

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

[53]Came into force provisionally on the date of signature.

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

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

[55]Came into force provisionally on the date of signature.

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

[57]United Nations, *Treaty Series*, vol. 33, p. 161.

[58]For the text of those States, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E. 95.V.5).

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

[60]Certain departures from the standard texts or amendments their thereto were introduced at the request of the host Governments.

[61]Came into force on 20 December 1994.

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

[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]Came into force on 27 December 1994..

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

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

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

[70]Came into force on 13 January 1995.

[71]United Nations, *Treaty Series*, vol. 334, p. 147.

[72]Came into force on 19 January 1995.

[73]Came into force on date of signature.

[74]Came into force on 1 March 1994.

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*) Non-proliferation issues

The question of non-proliferation was one of the most prominent disarmament issues discussed at all levels in 1994. While there was general support for the non-proliferation of nuclear weapons, differences persisted with regard to the manner of the extension of the non-proliferation Treaty.[1] By its resolution 49/75 F of 15 December 1994,[2] the General Assembly invited States parties to provide their legal interpretations of article X, paragraph 2, of the Treaty, which provides for the holding of a conference twenty-five years after the entry into force of the Treaty to decide whether the Treaty shall continue in force indefinitely or shall be extended for an additional fixed period or periods and their views on the different options and actions available, for compilation by the Secretary-General as a background document of the 1995 Review and Extension Conference of States Parties to the Treaty on the Non-proliferation of Nuclear Weapons. Moreover, by its resolution 49/73, of the same date,[3] the General Assembly noted with satisfaction that in the Conference on Disarmament there was no objection, in principle, to the idea of an international convention to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons, and 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.

Further progress was made regarding the non-proliferation of other weapons of mass destruction. By the end of the year, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction[4] had been signed by the overwhelming majority of States; however, the requisite number of ratifications for entry into force was not achieved by December. Furthermore, the parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction[5] agreed, at a Special Conference, to establish an ad hoc group to consider appropriate measures, including possible verification measures, tostengthen the Convention.

(*b*) Comprehensive test-ban treaty

The General Assembly, by its resolution 49-70 of 15 December 1994[6], reaffirming that a comprehensive nuclear-test ban was one of the highest priority objectives of the international community in the field of disarmament and non-prolifera-

tion and reaffirming the conviction that the exercise of utmost restraint in respect of nuclear testing would be consistent with the negotiation of a comprehensive test-ban treaty — urged all States participating in the Conference on Disarmament, in particular the nuclear-weapon States, to continue to negotiate intensively, as a high priority task, and to conclude a comprehensive test-ban treaty. Moreover, the General Assembly, by its resolution 49/69 of the same day,[7] noted the intention of the President of the Conference on Disarmament to convene another special meeting of the States parties to the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water,[8] as envisaged by the General Assembly in its resolution 48/69, to review developments and assess the situation regarding a comprehensive test ban and to examine the feasibility of resuming the work of the Amendment Conference.

(*c*) Nuclear arms limitation, disarmament and related matters

In 1994, the most important in the area of nuclear disarmament was the entry into force of START I,[9] as a result of Ukraine's accession to the Non-Proliferation Treaty. In addition to the traditional resolutions on bilateral nuclear-arms negotiations, by which the General Assembly encouraged the two major nuclear-weapon States to continue their efforts to reduce their nuclear arms, the Assembly adopted two new resolutions, both calling for the elimination of nuclear weapons, with one reflecting the views of those who considered that an agenda for nuclear disarmament should be set within a given time-frame, while the other was of a more general nature.

Another significant development was the agreement reached in the Conference on Disarmament that that body would be the most appropriate international forum in which to negotiate an international agreement banning the production of fissile material for nuclear weapons or other explosive devices.

In addition to its traditional resolutions with regard to a convention banning the use of nuclear weapons and to a prohibition of the dumping of radioactive wastes, the General Assembly adopted resolution 49/75 of 15 December 1984,[10] by which it requested an opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons, which proved to be the most controversial of all the resolutions adopted on disarmament in 1994.

Several positive developments took place in 1994 concerning existing or future nuclear-weapon-free zones. By its resolution 49/138 of 19 December 1994,[11] the General Assembly requested the Secretary-General to take the appropriate action in order that the drafting of a treaty on a nuclear-weapon-free zone in Africa could be finalized and submitted to the Assembly at its fiftieth session.

The Assembly by its resolution 49/83 of 15 December 1994,[12] welcomed the concrete steps taken by several countries of the region during the past year for the consolidation of the regime of military denuclearization established by the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco),[13] and noted with satisfaction the full adherence of Argentina, Belize, Brazil and Chile to the Treaty of Tlatelolco. Furthermore, by its resolution 49/84 also of 15 December,[14] the Assembly welcomed the commitment made by the States of the Zone of Peace and Cooperation of the South Atlantic to prevent the proliferation of nuclear weapons, in accordance with internationally recognized legal instruments. There were no major advances with respect to the long-standing proposals for the establishment of

nuclear-weapon-free zones in the Middle East and South Asia, nor with respect to implementation of the Declaration of the Indian Ocean as a Zone of Peace.

(*d*) Special Conference of the States parties to the biological weapons Convention

At the forty-ninth session of the General Assembly, in parallel with concerns expressed with regard to the danger of the proliferation of biological weapons (see (a) above), delegations voiced general satisfaction with the outcome of the Special Conference and viewed the adoption of the Final Declaration[15] by consensus as a significant step in the direction of the full implementation of the Convention. By its resolution 49/86 of 15 December 1994,[16] the General Assembly welcomed the final report of the Special Conference, adopted by consensus on 30 September 1994, in which the States parties agreed to establish an ad hoc group, open to all States parties, whose objective would be to consider appropriate measures, including possible verification measures, and draft proposals to strengthen the Convention, to be included in a legally binding instrument for the consideration of the States parties. By the same resolution, the Assembly further welcomed the information and data provided to date and reiterated its call upon all States parties to the Convention to participate in the exchange of information and data agreed to in the Final Declaration of 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.

(*e*) Outer space missions

The Conference on Disarmament continued to discuss the issue of preventing an arms race in outer space, but was not able to overcome the long-standing fundamental differences with regard to questions whether an arms race in outer space existed; whether measures further to those already in existence on the subject was necessary; and whether it would be desirable to begin negotiating confidence-building measures in outer space as a means of making progress towards preventing an arms race in that environment.

By its resolution 49/74 of 15 December 1994,[17] the General Assembly reaffirmed the importance and urgency of preventing an arms race in outer space and the 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;[18] also reaffirmed its recognition, as stated in the report of the Ad Hoc Committee on the Prevention of an Arms Race and Outer Space, that the legal regime applicable to outer space by itself did not guarantee the prevention of an arms race in outer space, that the 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; and requested the Conference on Disarmament to re-establish an ad hoc committee with an adequate mandate at the beginning of 1995 session and to continue building upon areas of convergence, taking into account the work undertaken since 1985, with a view to undertaking negotiations for the conclusion of an agreement or agreements, as appropriate, to prevent an arms race in outer space in all its aspects.

(*f*) Conventional weapons and advanced technologies

Questions related to conventional weapons and armed forces and to the impact of science and technology on international security continued to be addressed in various United Nations disarmament forums, primarily the General Assembly and the Disarmament Commission. As in previous years, the Secretary-General submitted a report to the General Assembly on "Scientific and technological developments and their impact on international security" and in it made an assessment of emerging trends.[19]

The General Assembly, by its resolution 49/68 of 15 December 1994,[20] affirmed that scientific and technological achievements should be used for the benefit of all mankind to promote the sustainable economic and social development of all States to safeguard international security, and that international cooperation in the use of science and technology through the transfer and exchange of technological know-out for peaceful purposes should be promoted; invited Member States to undertake additional efforts to apply science and technology for disarmament-related purposes and to make disarmament-related technologies available to interested States; and recommended that Member States adopt and implement national measures, consistent with international law, regulating the transfer of high technology with military applications in order to seek to ensure that such transfers do not undermine international peace and security and that access is not denied to high-technology products, services and know-how for peaceful purposes. By its resolution 49/67 of 15 December 1994,[21] the General Assembly, while expressing regret that the Disarmament Commission was unable to develop guidelines from its deliberations under its agenda item entitled "The role of science and technology in the context of international security, disarmament and other related fields", welcomed the report of the Secretary-General and fully agreed with the assessment that the application of new technologies for a qualitative improvement of weapons systems was seen as detracting from the efforts to reduce and eliminate the existing arsenals. By the same resolution, the General Assembly requested the Secretary-General to develop a database of concerned research institutions and experts with a view to promoting transparency and international cooperation in the applications of the scientific and technological developments for pursuing disarmament objectives such as disposal of weapons, conversion and verification, among others.

Much attention was devoted by the Member States to the illicit traffic in arms. By its resolution 49/75M of 15 December 1994,[22] the General Assembly invited the Disarmament Commission to expedite its consideration of the agenda item on international arms transfers, with special emphasis on the adverse consequences of the illicit transfer of arms and ammunition and to study measures to curb the illicit transfer and use of conventional arms; and requested the Secretary-General to seek the views of Member States on effective ways and means of collecting weapons illicitly transferred in the light of the experience gained by the United Nations and the views expressed by Member States and to submit a report on the result of his study to the General Assembly at its fiftieth session. The General Assembly also adopted a resolution on the relationship between disarmament and development.

(*g*) Convention on certain conventional weapons

The enormous numbers of mines sown on the territory of many countries and the consequent suffering of civilians, not only in time of war, but also long after the cessation of hostilities, continued to preoccupy the international community. In that

regard, at the forty-ninth session, the General Assembly adopted three resolutions. Under resolution 49/79, it called upon all States that had not yet done so to take all measures to become 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[23] as soon as possible. By its resolution 49/75 O, the Assembly called upon those States which had not yet done so to agree to a moratorium on the export of anti-personnel mines and to support their eventual elimination. By its resolution 49/215, the Assembly welcomed the establishment by the Secretary-General of a Voluntary Trust Fund to finance, in particular, information and training programmes relating to mine clearance operations and to facilitate the launching of mine-clearance operations, and it appealed to Member States to contribute to the Fund.

(*h*) Regional approaches to disarmament

At its forty-ninth session, the General Assembly adopted six resolutions, on 15 December 1994, specifically on regional approaches to disarmament. Under resolution 49/75 N,[24] the Assembly called upon States to conclude agreements, wherever possible, for nuclear non-proliferation, disarmament and confidence-building measures at regional and subregional levels. By its resolution 49/75 O,[25] the Assembly decided to give urgent consideration to the issues involved in conventional arms control at the regional and subregional levels, and requested the Conference on Disarmament, as a first step, to consider the formulation of principles that could serve as a framework for regional agreements on conventional arms control. By its resolution 49/77 D,[26] the General Assembly, recalling its resolution 43/78 H of 7 December 1988 in which it endorsed the guidelines for appropriate types of confidence-building measures and for the implementation of such measures on a global or regional level, recommended the guidelines for appropriate types of confidence-building measures to all States for implementation, taking fully into account the specific political, military and other conditions prevailing in a region.

By its resolution 49/76 C,[27] the General Assembly reaffirmed its support for efforts aimed at promoting confidence-building measures at the regional and subregional levels in order to ease regional tensions and to further disarmament, non-proliferation and the peaceful settlement of disputes in Central Africa. Under resolution 49/81,[28] the General Assembly reaffirmed that security in the Mediterranean was closely linked to European security as well as to international peace and security; commended the efforts by the Mediterranean countries in the continuation of initiatives and negotiations as well as the adoption of measures that would promote confidence- and security-building as well as disarmament in the Mediterranean region; and encouraged all States of the region to promote genuine openness and transparency in all military matters, particularly by participating in United Nations system for the standardized reporting of military expenditures as well as by providing accurate data and information to the Register of Conventional Arms. The Assembly also adopted a resolution in support of the United Nations Regional Centre for Peace and Disarmament in Africa, United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific, and United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean.

2. OTHER POLITICAL AND SECURITY QUESTION

(*a*) Membership in the United Nations

In 1994, the following State was submitted to membership in the United Nations:

State	*Decision of the General Assembly Resolution*	*Date of adoption*
Palau	49/63	15 December 1994

By the end of 1994, 185 States had become Members of the United Nations.

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

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its thirty-third session at the United Nations office at Vienna from 21 March to 5 April 1994.[29]

In considering agenda item "Question of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space", the Legal Subcommittee reestablished its Working Group on the item. The Legal Subcommittee had before it General Assembly resolution 47/68, whereby the Assembly had adopted the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, as well as General Assembly resolution 48/39 which provided that the Legal Subcommittee at its current session should continue, through its Working Group, its consideration of the question of early review and possible revision of the Principles. Bearing in mind that the Scientific and Technical Subcommittee was in the process of considering the implications of the use of nuclear power sources, the Working Group recommended that the consideration of the review of the Principles be suspended for one year, pending the results of the work in the Scientific and Technical Subcommittee. However, it was also recommended that the item concerning nuclear power sources be retained on the agenda of the Legal Subcommittee to allow delegations to continue consideration of that item in the plenary.

The Legal 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 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. The Working Group, in connection with the question of the geostationary orbit, began a paragraph-by-paragraph review of the working paper submitted by Columbia at the previous session,[30] which was considered productive and as providing a good basis for the future work of the Working Group on the topic.

The Legal Subcommittee as well re-established its Working Group on agenda 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 a working paper entitled "Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes", submitted at its previous session by the delega-

tions of Argentina, Brazil, Chile, Columbia, Mexico, Nigeria, Pakistan, the Philippines, Uruguay and Venezuela.[31] At the current session, the delegations of Egypt and Iraq also became co-sponsors of the working paper, which was further discussed at the session.

The Committee on the Peaceful Uses of Outer Space at its thirty-seventh session, held at the United Nations Office at Vienna from 6 to 16 June 1994, took note with appreciation of the report of the Legal Subcommittee on the work of its thirty-third session and made recommendations concerning the agenda of the Subcommittee at its thirty-fourth session.[32]

With regard to the agenda item entitled "Question of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space", the Committee was in agreement with the Legal Subcommittee concerning the one-year suspension of consideration of the Principles by the Working Group and the retention on the agenda of the Legal Subcommittee of the item concerning nuclear power sources.

Regarding the remainder of the Legal Subcommittee's agenda, the Committee recommended that the former continue its consideration of the items at its thirty-fourth session, in 1995.

The Committee also considered, in accordance with paragraph 38 of General Assembly resolution 48/39, the item entitled "Spin-off benefits of space technology: review of current status". The Committee noted that conversion of military industries to productive civilian uses would facilitate the transfer and use of space technologies and their spin-off benefits. Furthermore, 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 that could address the social and economic needs of developing countries.

At its forty-ninth session, by its resolution 49/34 of 9 December 1994,[33] adopted on the recommendation of the Special Political Committee,[34] 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[35] to give consideration to ratifying or acceding to those treaties, and endorsed the recommendations of the Committee that the Legal Subcommittee, at its thirty-fourth session, should continue consideration of its agenda items.

(*c*) Question of Antarctica

By its resolution 49/80 of 15 December 1994,[36] adopted on the recommendation of the First Committee,[37] the General Assembly, while recognizing that the Antarctic Treaty,[38] which provides, *inter alia*, for the demilitarization of the continent, the prohibition of nuclear explosions and the disposal of nuclear wastes, the freedom of scientific research and the free exchange of scientific information, was in furtherance of the purposes and principles of the Charter, and taking into account the Protocol on Environmental Protection to the Antarctic Treaty,[39] urged the Antarctic Treaty Consultative Parties to consider becoming parties as soon as possible to the Protocol, and so bring the Protocol into force in order to ensure the implementation of strengthened measures for the protection of the Antarctic environment and dependent and associated ecosystems; took note of the report of the Secretary-General

on Antarctica[40] and of the report of the Eighteenth Antarctic Treaty Consultative Meeting;[41] and welcomed the practice whereby the Antarctic Treaty Consultative Parties regularly provided the Secretary-General with information on their consultative meetings and on their activities in Antarctica. By the same resolution, the General Assembly noted the role accorded by the Secretary-General to the United Nations Environment Programme in relation to Antarctic matters, and urged the Antarctic Treaty Parties to extend invitations to the Executive Director of UNEP to attend future consultative meetings in order to assist them in the substantive work.

(*d*) Comprehensive review of the whole question of peacekeeping operations in all their aspects

The General Assembly, by its resolution 49/37 of 9 December 1994,[42] adopted on the recommendation of the Fourth Committee,[43] welcomed the report of the Special Committee on Peacekeeping Operations;[44] expressed its belief that it was of paramount importance that there be a clear and precise formulation of the mandate of peacekeeping operations, based on a comprehensive analysis and assessment of the situation on the ground by the Secretary-General and the Security Council and incorporating objectives achievable within a clear time-frame, which objectives should contribute to a political solution and be clearly related to the availability of the resources essential for their implementation; recommended the regular transmission of situation reports to troop-contributing countries, members of the Security Council and, where possible, other Member States on all peacekeeping operations; took note of the progress report of the Secretary-General on the start-up phase of the in-depth evaluation of peacekeeping;[45] stressed the need for a unified and well-defined United Nations command and control structure, incorporating a clear delineation of functions between United Nations Headquarters and the field, and noted that while operational matters should essentially be the responsibility of the force commander, Headquarters was responsible for overall control and political direction; reaffirmed that the financing of peacekeeping operations was the collective responsibility of all Member States in accordance with Article 17, paragraph 2, of the Charter and reiterated its call upon all Member States to pay their assessed contributions in full and on time, and commended those Member States which had offered voluntary contributions in addition to their assessed ones, and encouraged other Member States, including those directly concerned in a dispute that had resulted in deployment of a peacekeeping operation, to do the same, including contributions in kind, in accordance with their financial capacity and the Financial Regulations and Rules of the United Nations. By the same resolution, the General Assembly welcomed the adoption by its Sixth Committee of the Convention on the Safety of United Nations and Associated Personnel;[46] noted the importance of concluding arrangements between the United Nations and troop-contributing countries before deployment occurred, and stressed that, as far as possible, those arrangements should be along the lines of the model agreement outlined in the report of the Secretary-General of 23 May 1991;[47] stressed the need, bearing in mind the provisions of Chapter VIII of the Charter of the United Nations, to enhance the cooperation and coordination between the United Nations and those regional arrangements and organizations able to assist it in its peacekeeping activities in accordance with their respective mandates, scope and composition; and also noted the recent work of the Special Committee on the Charter of the United Nations and on the Strenghtening of

the Role of the Organization in elaborating the text of the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security.[48]

(*e*) Request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons

The General Assembly, by its resolution 49/75K of 15 December 1994,[49] adopted on the recommendation of the First Committee,[50] noting the concerns expressed in the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons that insufficient progress had been made towards the complete elimination of nuclear weapons at the earliest possible time; recalling that, convinced of the need to strengthen the rule of law in international relations, it had declared the period 1990-1999 the United Nations Decade of International Law;[51] noting that Article 96, paragraph 1, of the Charter empowered the General Assembly to request the International Court of Justice to give an advisory opinion on any legal question; recalling the recommendation of the Secretary-General, made in his report entitled "An Agenda for Peace,"[52] that United Nations organs that were authorized to take advantage of the advisory competence of the International Court of Justice turn to the Court more frequently for such opinions; and welcoming resolution 46/40 of 14 May 1993 of the Assembly of the World Health Organization, in which the organization had requested the International Court of Justice to give an advisory opinion on whether the use of nuclear weapons by a State in war or other armed conflict would be a breach of its obligations under international law, including the Constitution of the World Health Organization; decided, pursuant to Article 96, paragraph 1, of the Charter of the United Nations, to request the International Court of Justice urgently to render its advisory opinion on the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

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

(*a*) Environmental questions

Fourth special session of the Governing Council of the United Nations Environment Programme[53]

The fourth special session of the Governing Council of the United Nations Environment Programme was held at UNEP headquarters, Nairobi, on 18 June 1994. In order to reduce costs, it was held at the same location immediately prior to the second session of the Intergovernmental Committee on the Convention on Biological Diversity. At the special session, the Council was invited to adopt the Instrument for the Establishment of the Restructured Global Environment Facility (GEF)[54] as the basis for the participation of UNEP as an implementing agency of GEF.

By its decision SS.IV/1,[55] the Governing Council, having taken note of the agreement reached at the Global Environment Facility Participants' meeting in 1994 on the text of the Instrument for the Establishment of the Restructured Global Environment Facility, adopted the Instrument, as a basis for the participation of UNEP as an implementing agency of GEF, and requested the Executive Director of UNEP to

consider ways of enhancing the capacity of UNEP to fulfil its role in the Global Environment Facility. The Governing Council further requested the Executive Director to include in the provisional agenda for the eighteenth regular session of the Council an item on the participation of UNEP in GEF and to present a progress report to the Council thereon.

Consideration of the General Assembly

At its forty-ninth session, the General Assembly, by its resolution 49/112 of 19 December 1994,[56] adopted on the recommendation of the Second Committee,[57] convinced that the continuing deterioration of the global environment at all levels, owing to the impact of constantly increasing human activity, remained a serious concern requiring further attention, including enhanced awareness and intensified action, welcomed the Global Learning and Observations to Benefit the Environment (GLOBE) programme initiated by the Government of the United States of America on 22 April 1994, which aimed to enhance the collective awareness of individuals throughout the world concerning the environment, increase scientific understanding of the Earth and help all students reach the highest standards in science and mathematics education, and requested the Secretary-General to ensure that appropriate account was taken of the GLOBE initiative in the efforts of the United Nations system to support the implementation of Agenda 21,[58] particularly in the coordinating functions of the Inter-agency Committee on Sustainable Development of the Administrative Committee on Coordination. By its resolution 49/113 of the same date,[59] adopted on the recommendation of the Second Committee,[60] aware of the fact that dissemination of the principles contained in the Declaration on Environment and Development[61] could stimulate increased national and international efforts to promote sustainable and environmentally sound development in all countries, urged all Governments to promote the widespread dissemination at all levels of the Rio Declaration.

By its resolution of 49/120 of 19 December 1994,[62] adopted on the recommendation of the Second Committee,[63] the General Assembly welcomed the entry into force, on 21 March 1994, of the United Nations Framework Convention on Climate Change,[64] noted with satisfaction that a large number of States and one regional economic integration organization had taken action to ratify the Convention and called upon other States to take appropriate action to that end, and urged the Intergovernmentel Negotiating Committee for a Framework Convention on Climate Change to complete fully, at its eleventh session, to be held in New York from 6 to 17 February 1995, its plan of preparatory work for the first session of the Conference of the Parties to the Convention. By its resolution 49/114 of the same date,[65] adopted on the recommendation of the Second Committee,[66] the Assembly, highlighting the importance of the implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer,[67] concluded at Montreal on 16 September 1987, and its subsequent amendments, and the relevant role played by the Executive Committee of its Multilateral Fund, proclaimed 16 September the International Day for the Preservation of the Ozone Layer, commemorating the date on which the Montreal protocol was signed, to be observed beginning in 1995.

By its resolution 49/115 19 December 1994,[68] adopted on the recommendation of the Second Committee,[69] the General Assembly decided to proclaim 17 June the World Day to Combat Desertification and Drought, to be observed beginning in 1995, and invited all States to devote the World Day to promoting public awareness

through the publication and diffusion of documentaries and the organization of conferences, round-table meetings, seminars and expositions relating to international cooperation to combat desertification and the effects of drought and the implementation of the provisions of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Deseritification, particularly in Africa,[70] and its regional implementation annexes. By its resolution and 49/234 of 23 December 1994,[71] adopted on the recommendation of the Second Committee,[72] the General Assembly urged States that had not yet signed the Desertification Convention to do so during the current session of the Assembly and no later than 13 October 1995, in conformity with article 33 of the Convention, and urged States and Organizations that had signed the Convention to proceed to its ratification so that it might enter into force as soon as possible; invited signatories to the Convention, in addition to the information provided at the time of signature, to continue to communicate to the interim secretariat of the Convention information on actions taken or envisaged for the implementation of the provisions of Intergovernmental Negotiating Committee resolution 5/I on urgent action for Africa; and decided that the Committee should continue to function in order, *inter alia*, to prepare for the first session of the Conference of the Parties to the Convention, as specified in the Convention.

By its resolution 49/117 of 19 December 1994,[73] adopted on the recommendation of the Second Committee,[74] the General Assembly welcomed the early entry into force of the Convention on Biological Diversity[75] and the convening of the first meeting of the Conference of the Parties to the Convention, held at Nassau from 28 November to 9 December 1994, and called upon those States which had not yet ratified the Convention to expedite their internal procedures of ratification, acceptance or approval. By its resolution for 49/119 of the same date,[76] adopted on the recommendation Second Committee,[77] the Assembly proclaimed 29 December, the date of the entry into force of the Convention on Biological Diversity, International Day for Biological Diversity.

By its resolution 49/116 of 19 December 1994,[78] adopted on the recommendation of the Second Committee,[79] the General Assembly, recalling Agenda 21, adopted by the United Nations Conference on Environment and Development, in particular its chapter 17, concerning the sustainable development and conservation of the marine living resources of areas under national jurisdiction, called upon States to take the responsibility, consistent with their obligations under international law as reflected in the United Nations Convention on the Law of the Sea,[80] of taking measures to ensure that no fishing vessels entitled to fly their national flag fished in zones under the national jurisdiction of other States unless duly authorized by the competent authorities of the coastal State or States concerned; such authorized fishing operations should be carried out in accordance with the conditions set out in the authorization; and called upon development assistance organizations to make it a high priority to support efforts, including through financial and/or technical assistance, by the developing coastal States, in particular the least developed countries and the small island developing States, to improve the monitoring and control of fishing activities and the enforcement of fishing regulations. By its resolution 49/118 of the same date,[81] adopted on the recommendation of the Second Committee,[82] the General Assembly, recalling that the United Nations Conference on Environment and Development, held at Rio de Janeiro in June 1992,[83] and the International Conference on Responsible Fishing, held at Cancun, Mexico, in May 1992,[84] agreed to promote the development and use of selective fishing gears and practices that

minimized waste in the catch of target fish species and minimized by-catch of non-target fish and non-fish species, believed that the issue of by-catch and discards in fishing operations warranted serious attention by the international community; also believed that a continued and effective response to the issue of addressing fisheries by-catch and discards was necessary so as to ensure the long-term and sustainable development of fisheries, taking into account the relevant principles contained in the Rio Declaration on Environment and Development; and invited the Food and Agriculture Organization of the United Nations to formulate fisheries by-catch and discard provisions in its international code of conduct for responsible fishing, taking into account work being done elsewhere. By its resolution 49/121 of the same date,[85] adopted on the recommendation of the Second Committee,[86] the Assembly noted the progress made by the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks at its previous sessions; approved the convening in New York of two further sessions of the Conference in 1995, in accordance with the recommendation of the Conference; and decided to include in the provisional agenda of its fiftieth session, under the item entitled "Environment and sustainable development", a sub-item entitled "Sustainable use and conservation of the marine living resources of the high seas: report of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks". By its resolution 49/131 of the same date,[87] adopted on the recommendation of the Second Committee,[88] the General Assembly proclaimed 1998 International Year of the Ocean.

(*b*) Crime prevention and criminal justice

By its resolution 49/157 of 23 December 1994,[89] adopted on the recommendation of the Third Committee,[90] the General Assembly took note of the report of the Secretary-General[91] on the progress made in the implementation of Assembly resolutions 46/152, 47/91 and 48/103, and of the progress made so far in the preparation for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. By its resolution 49/158 of 23 December 1994,[92] adopted on the recommendation of the Third Committee,[93] the Assembly requested the Secretary-General, as a matter of urgency, to give effect to its resolutions 46/152, 47/91 and 48/103 and to Economic and Social Council resolutions 1992/22, 1993/31, 1993/34 and 1994/16 by providing the United Nations crime prevention and criminal justice programme with sufficient resources for the full implementation of its mandates, in conformity with the high priority attached to the programme; and recognized that operational activities and technical assistance should continue to receive priority attention among United Nations activities in crime prevention and criminal justice.

By its resolution 49/156 of 23 December 1994,[94] adopted on the recommendation of the Third Committee,[95] the General Assembly commended the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders for the activities it had undertaken, despite the difficulties it faced in fulfilling its mandate, as reflected in the progress report of the Secretary-General on the activities of the United Nations Interregional Crime and Justice Research Institute and other institutes.[96] Furthermore, by its resolution 49/159 of 23 December 1994,[97] adopted on the recommendation of the Third Committee,[98] the Assembly approved the Political Declaration and the Global Action Plan against Organized Transnational Crime,[99] adopted at Naples by the Conference, and urged States to implement them as a matter of urgency.

(*c*) International drug control

Status of international instruments

In the course of 1994, four more States became parties to the 1961 Single Convention on Narcotic Drugs,[100] five more States became parties to the 1971 Convention on Psychotropic Substances,[101] four more States became parties to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,[102] six 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,[103] and 10 more States became parties to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[104]

Consideration by the General Assembly

By its resolution 49/168 of 23 December 1994,[105] adopted on the recommendation of the Third Committee,[106] the General Assembly reaffirmed that the fight against drug abuse and illicit trafficking should not in any way justify violation of the principles enshrined in the Charter of the United Nations and international law, particularly respect for the sovereignty and territorial integrity of States and non-use of force or the threat of force in international relations; renewed its commitment to further strengthening international cooperation and substantially increasing efforts against the illicit production, sale, demand, traffic and distribution of narcotic drugs and psychotropic substances, based on the principle of shared responsibility and taking into account experience gained; and called upon all States to adopt adequate national laws and regulations, to strengthen national judicial systems and to carry out effective drug control activities in cooperation with other States in accordance with those international instruments.

Furthermore, the General Assembly reaffirmed the importance of achieving the objectives of the United Nations Decade against Drug Abuse 1991-2000, under the theme "A global response to a global challenge", by Member States, the United Nations International Drug Control Programme and the United Nations system; reaffirmed the importance of the Global Programme of Action[107] as a comprehensive framework for national, regional and international action to combat illicit production of, demand for and trafficking in narcotic drugs and psychotropic substances; called uon States to implement the mandates and recommendations of the Global Programme of Action, with a view to translating it into practical action for drug abuse control at the national, regional and international levels; and urged all Governments and competent regional organizations to develop a balanced approach within the framework of comprehensive demand reduction activities, giving adequate priority to prevention, treatment, research, social reintegration and training in the context of national strategic plans to combat drug abuse.

By the same resolution, the General Assembly supported the United Nations System-wide Action Plan on Drug Abuse Control[108] as a vital tool for the coordination and enhancement of drug abuse control activities within the United Nations system and requested that it be updated and reviewed on a biennial basis with a view to continuing efforts to improve the presentation and usefulness as a strategic tool of the United Nations for the drug problem; and reaffirmed the role of the Executive Director of the United Nations International Drug Control Programme in coordinating and providing effective leadership for all United Nations drug control activities so as to increase cost-effectiveness and ensure coherence of action within the Programme as well as coordination, complementarity and non-duplication of such activities across the United Nations system.

(*d*) Human rights questions

(1) *Status and implementation of international instruments*

(i) International Covenants on Human Rights

In 1994, four more States became parties to the International Covenant on Economic, Social and Cultural Rights,[109] five more States became parties to the International Covenant on Civil and Political Rights,[110] six more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights,[111] and seven more States became parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty.[112]

(ii) Convention on the Elimination of All Forms of Discrimination against Women[113]

In 1994, eight more States became parties to the Convention on the Elimination of All Forms of Discrimination against Women.

By its resolution 49/164 of 23 December 1994,[114] adopted on the recommendation of the Third Committee,[115] the General Assembly took note of the report of the Secretary-General on the status of the Convention,[116] and of the reports of the Committee on the Elimination of Discrimination against Women on its twelfth[117] and thirteenth[118] sessions.

(iii) Convention on the Rights of the Child[119]

In 1994, 14 more States became parties to the Convention on the Rights of the Child.

By its resolution 49/211 of 23 December 1994,[120] adopted on the recommendation of the Third Committee,[121] the General Assembly took note of the report of the Secretary-General on the status of the Convention.[122]

(iv) International Convention on the Elimination of All Forms of Racial Discrimination[123]

In 1994, five more States became parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

By its resolution 49/144 of 23 December 1994,[124] adopted on the recommendation of the Third Committee,[125] the General Assembly took note of the report of the Secretary-General.[126] Furthermore, by resolution 49/145 of the same date,[127] adopted on the recommendation of the Third Committee,[128] the General Assembly took not with appreciation of the report of the Committee on the work of its forty-fourth and forty-fifth sessions.[129]

(v) International Convention on the Suppression and Punishment of the Crime of Apartheid[130]

In 1994, one more State became a party to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

(vi) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[131]

In 1994, one more State became a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

By its resolution 49/175 of 23 December 1994,[132] adopted on the recommendation of the Third Committee,[133] the General Assembly took note of the report of the Secretary-General[134] and requested him to submit to it at its fiftieth session an updated report on the status of the Convention.

(vii) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[135]

In 1994, seven more States became parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

By its resolution 49/177 of 23 December 1994,[136] adopted on the recommendation of the Third Committee,[137] the General Assembly commended the Committee against Torture for its excellent report, in its modified presentation,[138] and noted the status of submission of reports by States parties to the Convention.[139]

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

By its resolution 49/178 of 23 December 1994,[140] adopted on the recommendation of the Third Committee,[141] the General Assembly took note of the conclusions and recommendations of the fifth meeting of persons chairing human rights treaty bodies,[142] and further took note of the reports of the Secretary-General[143] on progress achieved in enhancing the effective functioning of the treaty bodies, and of the note of the Secretary-General.[144]

(2) *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 49/181 of 23 December 1994, [145] adopted on the recommendation of the Third Committee,[146] 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 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 within the provisions of the Charter, including respect for territorial integrity; reaffirmed that it was a purpose of the United Nations and the task of all Member States, in cooperation with the Organization, to promote and encourage respect for human rights and fundamental freedoms and to remain vigilant with regard to violations of human rights wherever they occur; and 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.

(3) *Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotions of democratization*

By its resolution 49/190 of 23 December 1994,[147] adopted on the recommendation of the Third Committee,[148] the General Assembly commended the electoral assistance provided to Member States at their request by the United Nations, requested that such assistance continue on a case-by-case basis in accordance with the proposed guidelines on electoral assistance, recognizing that the fundamental responsibility for ensuring free and fair elections lay with Governments, and also requested the Electoral Assistance Division of the Department of Peacekeeping Operations of the United Nations Secretariat to continue to inform Member States on a regular basis about the requests received, the responses given to those requests and the nature of the assistance provided; recommended that the Electoral Assistance Division provide post-election assistance to States that request such assistance, and to electoral institutions, in order to contribute to the stability and continuity of their electoral processes, as provided for in the report of the Secretary-General, and that it study, in cooperation with relevant United Nations offices, ways of defining more clearly the activities related to democratic consolidation which the United Nations might usefully undertake in assisting the efforts of interested States in that regard; and further requested the Secretary-General to take further steps to support states which request assistance by, *inter alia*, enabling the United Nations High Commissioner for Human Rights, in accordance with his mandate and through the Centre for Human Rights of the United Nations Secretariat, to support democratization activities as related to human rights concerns, including, *inter alia*, human rights training and education, assistance for human rights-related legislative reform, strengthening and reform of the judiciary, assistance to national human rights institutions and advisory services on treaty accession, reporting and international obligations as related to human rights.

(4) *Strengthening of the rule of law*

By its resolution 49/194 of 23 December 1994,[149] adopted on the recommendation of the Third Committee,[150] the General Assembly welcomed the report of the Secretary-General[151] submitted in conformity with resolution 48/132, and took note with interest of the proposals submitted in the report of the Secretary-General for strengthening the programme of advisory services and technical assistance of the Centre for Human Rights of the Secretariat in order to comply fully with the recommendations of the World Conference on Human Rights concerning assistance to States in strengthening their institutions in the rule of law; and requested the Secretary-General to explore the possibilities of obtaining from all relevant institutions of the United Nations system, including financial institutions, acting within their mandates, technical and financial assistance to strengthen the realization of human rights and the maintenance of the rule of law.

(5) *Universal realization of the right of peoples to self-determination*

By its resolution 49/148 of 23 December 1994,[152] adopted on the recommendation of the Third Committee,[153] the General Assembly, taking note of the report of the Secretary-General on the right of peoples to self-determination,[154] 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 called upon those States responsible to cease immediately their military intervention in and occupation of foreign countries and territories and all acts of repression, discrimination, exploitation and maltreatment, particularly the brutal and inhuman methods reportedly employed for the execution of those acts against the peoples concerned.

(6) *Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*

By its resolution 49/192 of 23 December 1994,[155] adopted on the recommendation of the Third Committee,[156] the General Assembly urged States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities, as set out in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities,[157] including through the facilitation of their full participation in all aspects of society and in the economic progress and development in their country; and further urged States to take, as appropriate, all the necessary constitutional, legislative, administrative and other measures to promote and give effect to the principles contained in the Declaration.

(7) *Human rights and terrorism*

By its resolution 49/185 of 23 December 1994,[158] adopted on the recommendation of the Third Committee,[159] the General Assembly reiterated its unequivocal condemnation of all acts, methods and practices of terrorism, as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences on the economic and social development of States; and called upon States to take all necessary and effective measures in accordance with international standards of human rights, to prevent, combat and eliminate all acts of terrorism wherever and by whomever committed, and urged the international community to enhance cooperation in the fight against the threat of terrorism at national, regional and international levels.

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

By its resolution 49/188 of 23 December 1994,[160] adopted on the recommendation of the Third Committee,[161] the General Assembly urged States to ensure that their constitutional and legal systems provided full guarantees of freedom of thought, conscience, religion and belief to all without discrimination, including the provision of effective remedies in cases where the right to freedom of religion or belief is violated; further urged States, in conformity with international standards of human rights, to take all necessary action to prevent such instances, to take all appropriate measures to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by religious extremism and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief; and emphasized that, as underlined by the Human Rights Committee, restrictions on the freedom to manifest religion or belief were permitted only if limitations were prescribed by law, were necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and were applied in a manner that did not vitiate the right to freedom of thought, conscience and religion.

(9) *Towards full integration of persons with disabilities in society: implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities and of the Long-Term Strategy to Implement the World Programme of Action concerning Disabled Persons to the Year 2000 and Beyond*

By its resolution of 23 December 1994,[162] adopted on the recommendation of the Third Committee,[163] the General Assembly, recalling its resolution 37/52 of 3 December 1982, by which it adopted the World Programme of Action concerning Disabled Persons,[164] urged all Governments to implement, with the cooperation and assistance of organizations, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, set out in the annex to General Assembly resolution 48/96 of 20 December 1993; and called upon Governments, when implementing the World Programme of Action, to

take into account the elements suggested in the Long-Term Strategy to Implement the World Programme of Action concerning Disabled Persons to the Year 2000 and Beyond, as set out in the report of the Secretary-General on the implementation of the World Programme of Action.[165]

(10) *Violence against women migrant workers*

By its resolution 49/165 of 23 December 1994,[166] adopted on the recommendation of the Third Committee,[167] the General Assembly, convinced of the need to eliminate all forms of discrimination against women and to protect them from gender-based violence, recalled its resolution 48/104 of 20 December 1993, by which it had adopted the Declaration on the Elimination of Violence against Women; welcomed measures to strengthen the human rights of women and the establishment of closer ties between the organs dealing with women's issues and rights in the United Nations, through a special programme of activities, as envisioned in the proposed revision to the medium-term plan for the period 1992-1997; called upon the countries concerned to take appropriate measures to ensure that law enforcement officials assisted in guaranteeing the full protection of the rights of women migrant workers, consistent with international obligations of Member States; and urged both sending and host countries to help ensure that women migrant workers were protected from unscrupulous recruitment practices, if needed by the adoption of legal measures.

(11) *Traffic in women and girls*

By its resolution 49/166 of 23 December 1994,[168] adopted on the recommendation of the Third Committee,[169] the General Assembly, reaffirming its faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, enshrined in the Charter of the United Nations; reaffirming also the principles set forth in the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Declaration on the Elimination of Violence against Women; and recalling that the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993,[170] affirmed the human rights of women and the girl child as an inalienable, integral and indivisible part of universal human rights, expressed its grave concern over the worsening problem of trafficking, particularly the increasing syndication of the sex trade and the internationalizaton of the traffic in women and girl children; encouraged Governments, relevant bodies and specialized agencies of the United Nations system, intergovernmental organizations and non-governmental organizations to gather and share information relative to all aspects of trafficking in women and girl children to facilitate the development of anti-trafficking measures; urged Governments to take appropriate measures to address the problem of trafficking in women and girl children and to ensure that the victims were provided with the necessary assistance,

support, legal advice, protection, treatment and rehabilitation, and further urged Governments to cooperate in the matter; and also encouraged Member States to consider signing and ratifying or acceding to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,[171] the Slavery Convention as amended,[172] and all other relevant international instruments.

(12) *Human rights and extreme poverty*

By its resolution 49/179 of 23 December 1994,[173] adopted on the recommendation of the Third Committee,[174] the General Assembly, deeply concerned that extreme poverty continues to spread in all countries of the world, regardless of their economic, social and cultural situation, and seriously affected the most vulnerable and disadvantaged individuals, families and groups, who were thus hindered in the exercise of their human rights and their fundamental freedoms, reaffirmed that extreme poverty and exclusion from society constituted a violation of human dignity and that urgent national and international action was therefore required to eliminate them; and reaffirmed also that, in accordance with the Vienna Declaration and Programme of Action, it was essential for States to foster participation by the poorest people in the decision-making process in their communities, in the promotion of human rights and in efforts to combat extreme poverty.

(*e*) Office of the United Nations High Commissioner for Refugees[175]

During the reporting period, a number of important agreements were reached and arrangements made for large-scale voluntary repatriation movements, notably in Africa and Asia. At the same time, the deterioration in a number of other situations led to major new refugee flows. Worldwide, the total population of concern to the High Commissioner reached some 23 million, including some 16.4 million refugees, as well as certain groups of internally displaced and other persons of humanitarian concern. The Office continued to pursue a strategy of prevention, preparedness and solutions in responses to problems of coerced displacement. It continued its endeavours to secure asylum for those compelled to flee and to respond rapidly to their emergency needs, while complementing these efforts with prevention and solution-oriented activities in countries of origin.

UNHCR continued to cooperate with other actors in the development of strategies to resolve and, where possible, prevent the causes of refugee flows and, in the search for solutions, to be active in promoting conditions which would make voluntary repatriation of refugees possible. Furthermore, UNHCR encouraged discussion in various forums of comprehensive regional approaches to mass forced displacements, where persecution might have been one of a number of complex motives underlying flight.

As the factors which generate involuntary movements create both refugees and internally displaced persons, UNHCR advocated the strengthening of humanitarian law and human rights law as it applied to displaced persons. In particular, UNHCR emphasized the need to improve the implementation of existing principles of humanitarian law and human rights law, and to develop the legal basis for humanitarian access to affected populations.

In securing the rights of refugees, where direct and indirect obstacles were placed in the way of refugee safety and refugee recognition, UNHCR intervened with the authorities to secure the immediate safety of the refugee or asylum-seeker. In this regard, the Office also provided its interpretation of certain doctrines enshrined in the 1951 Convention relating to the Status of Refugees[176] and other instruments.

During 1994, Dominica, Samoa and the former Yugoslav Republic of Macedonia acceded or succeeded to the 1951 Convention and/or the 1967 Protocol[177] relating to the Status of Refugees.

UNHCR's promotional activities sought to strengthen knowledge and understanding of refugee issues, as well as to foster the effective implementation of international legal standards on behalf of refugees, returnees and other persons of concern to UNHCR, including through their incorporation into national legislation and administrative procedures. The development of a model legislation on refugees was at the heart of a cooperation project between UNHCR, OAU and the Asian-African Legal Consultative Committee. Furthermore, UNHCR organized well over 100 refugee law and protection courses throughout the world during the reporting period.

At the forty-fifth session of the Executive Committee of the Programme of the High Commissioner for Refugee, held at Geneva from 3 to 7 October 1994,[178] the Committee reaffirmed the importance of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees as the cornerstone of the international system for the protection of refugees, and underlined the role of the High Commissioner, pursuant to articles 35 and II of those instruments, respectively, in supervising their application. The Committee further recognized that international human rights law, international humanitarian law and , in many cases, national laws included norms providing for the security and protection of the internally displaced as well as those at risk of displacement and expressed serious concern at the failure of parties involved to respect those norms. The Committee also urged the High Commissioner to undertake initiatives for refugee women in the areas of leadership and skills training, legal awareness and education and in particular in the area of reproductive health, with full respect for the various religious and ethical values and cultural backgrounds of the refugees, in conformity with universally recognized international human rights and the UNHCR Guidelines on the Protection of Refugee Women.[179] The Committee supported efforts to enhance the implementation of the Guidelines on Refugee Children,[180] in particular, the integration of refugee children's issues into training of UNHCR staff as well as their implementing partners, and the creation of a Regional Support Unit for Refugee Children.

By its resolution 49/169 of 23 December 1994,[181] adopted on the recommendation of the Third Committee,[182] the General Assembly strongly reaffirmed the fundamental importance of the function of the United Nations High Commissioner for Refugees of providing international protection to refugees and the need for States to cooperate fully with her Office in order to facilitate the effective exercise of that function; called upon all States that had not yet done so to accede or declare succession to and to implement fully the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and relevant regional instruments for the protection of refugees; called upon all States to uphold asylum as an indispensable instrument for the international protection of refugees and to respect scrupulously the fundamental principle of non-refoulement; reiterated the importance of ensuring access, for all persons seeking international protection, to fair and efficient procedures for the de-

termination of refugee status or, as appropriate, to other mechanisms to ensure that persons in need of international protection were identified and granted such protection, while not diminishing the protection afforded to refugees under the terms of the 1951 Convention, the 1967 Protocol and relevant regional instruments; acknowledged the continuing close cooperation between the High Commissioner and the representative of the Secretary-General on internally displaced persons in the exercise of his mandate, and recognized the importance of their close cooperation, and of cooperation with the International Committee of the Red Cross, with respect to prevention, protection, humanitarian assistance and solutions; and noted the relationship between safeguarding human rights and preventing refugee situations and welcomed the High Commissioner's growing cooperation with the United Nations High Commissioner for Human Rights and her continued cooperation with the Centre for Human Rights of the Secretariat and the Commission on Human Rights.

(*f*) International Tribunal for Rwanda

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

The statute of the International Tribunal reads as follows:

Statute of the International Tribunal for Rwanda

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territroy of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions os the present Statute.

Article 2

Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(*a*) Killing members of the group;

(*b*) Causing serious bodily or mental harm to members of the group;

(*c*) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(*d*) Imposing measures intended to prevent births within the group;

(*e*) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

(*a*) Genocide;

(*b*) Conspiracy to commit genocide;

(*c*) Direct and public incitement to commit genocide;

(*d*) Attempt to commit genocide;

(*e*) Complicity in genocide.

Article 3

CRIMES AGAINST HUMANITY

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

(*a*) Murder;

(*b*) Extermination;

(*c*) Enslavement;

(*d*) Deportation;

(*e*) Imprisonment;

(*f*) Torture;

(*g*) Rape;

(*h*) Persecutions on political, racial and religious grounds;

(*i*) Other inhumane acts.

Article 4

VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

(*a*) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(*b*) Collective punishments;

(*c*) Taking of hostages;

(*d*) Acts of terrorism;

(*e*) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(*f*) Pillage;

(*g*) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;

(*h*) Threats to commit any of the foregoing acts.

Article 5

PERSONAL JURISDICTION

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6

INDIVIDUAL CRIMINAL RESPONSIBILITY

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8

Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

Article 9

Non bis in idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(*a*) The act for which he or she was tried was characterized as an ordinary crime; or

(*b*) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

ORGANIZATION OF THE INTERNATIONAL TRIBUNAL FOR RWANDA

The International Tribunal for Rwanda shall consist of the following organs:

(*a*) The Chambers, comprising two Trial Chambers and an Appeals Chamber;

(*b*) The Prosecutor; and

(*c*) A Registry.

Article 11

COMPOSITION OF THE CHAMBERS

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) Five judges shall serve in the Appeals Chamber.

Article 12

QUALIFICATION AND ELECTION OF JUDGES

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as 'the International Tribunal for the Former Yugoslavia") shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(*a*) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(*b*) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;

(*c*) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(*d*) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-

member States maintaining permanent observer mission at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

3. The judges of each Trial Chambers shall elect a Presiding Judge, who shall conduct all of the proceedings of the Trial Chambers as a whole.

Article 14

Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in he territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

THE REGISTRY

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 17

INVESTIGATION AND PREPARATION OF INDICTMENT

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 18

REVIEW OF THE INDICTMENT

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

COMMENCEMENT AND CONDUCT OF TRIAL PROCEEDINGS

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 20

RIGHTS OF THE ACCUSED

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of chares against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statue, the accused shall be entitled to the following minimum guarantees, in full equality:

(*a*) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(*b*) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(*c*) To be tried without undue delay;

(*d*) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(*e*) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(*f*) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(*g*) Not to be compelled to testify against himself or herself or to confess guilt.

Article 21

PROTECTION OF VICTIMS AND WITNESSES

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22

JUDGEMENT

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 23

PENALTIES

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24

APPELLATE PROCEEDINGS

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

(*a*) An error on a question of law invalidating the decision; or

(*b*) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25

REVIEW PROCEEDINGS

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26

ENFORCEMENT OF SENTENCES

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

PARDON OR COMMUTATION OF SENTENCES

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 28

COOPERATION AND JUDICIAL ASSISTANCE

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

(*a*) The identification and location of persons;

(*b*) The taking of testimony and the production of evidence;

(*c*) The service of documents;

(*d*) The arrest or detention of persons;

(*e*) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29

THE STATUS, PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR RWANDA

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

Article 30

EXPENSES OF THE INTERNATIONAL TRIBUNAL FOR RWANDA

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with article 17 of the Charter of the United Nations.

Article 31

WORKING LANGUAGES

The working languages of the International Tribunal shall be English and French.

Article 32

ANNUAL REPORT

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.

(*g*) Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

The General Assembly, by its decision 49/410, adopted without reference to a Main Committee, took note of the first annual report of the International Tribunal.[183]

(*h*) New international humanitarian order

The General Assembly, by its resolution 49/170 of 23 December 1994,[184] adopted on the recommendation of the Third Committee,[185] taking note of the report of the Secretary-General[186] and the previous reports[187] containing the comments and views of Governments, specialized agencies and non-governmental organizations, expressed

its appreciation to the Secretary-General for his continuing support for the efforts to promote a new international humanitarian order; and urged Governments and governmental and non-governmental organizations that had not yet done so to provide their comments and views to the Secretary-General on the issue.

4. LAW OF THE SEA

Status of the United Nations Convention on the Law of the Sea (1982)[188]

On 16 November 1994, the United Nations Convention on the Law of the Sea entered into force. By that date, 68 States had established their consent to be bound by the Convention, and by 31 December 1994, 70 States had done so.

Before its entry into force, the General Assembly adopted on 18 July 1994 a separate Agreement, relating to the implementation of Part XI and related annexes to the Convention.

Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea

In 1994, the Preparatory commission concluded its substantive work after 12 years of deliberation.[190] During the concluding twelfth session, in 1994, there were 10 formal meetings of the plenary, in addition to a number of meetings of the subsidiary organs. In accordance with the decision of the Preparatory Commission, the Group of Technical Experts held two sessions, and the Training Panel held nine meetings.

Following the established practice, a number of working papers and background papers were presented by the Secretariat to the Commission and its subsidiary organs. These papers dealt, *inter alia*, with: the status of implementation of the registered pioneer investors' obligations under resolution II and the related understandings; rules of the international Tribunal for the Law of the Sea; cooperation and relationship between the United Nations and the Tribunal; initial financing and budget of the Tribunal; rules of procedure for the first meeting of States Parties to the Convention for the establishment of the Tribunal; and budgets for the first financial period of the Authority and of the Tribunal.[191]

Consideration by the General Assembly

By its resolution 49/28 of December 1994,[192] the General Assembly expressed its satisfaction at the establishment of the International Seabed Authority; welcomed the first meeting of States parties to the Convention concerning the establishment of the International Tribunal for the Law of the Sea; expressed its satisfaction also at the progress being made in the establishment of the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf; called upon States to harmonize their national legislation with the provisions of the Convention and to ensure consistent application of those provisions; decided to undertake an annual review and evaluation of the implementation of the Convention and other developments relating to ocean affairs and the law of the sea; requested the Secretary-General to continue to carry out the responsibilities entrusted to him upon the adoption of the Convention[193] and to fulfil the functions consequent upon the entry into force of the Convention; also requested the Secretary-General to make the necessary arrangements

within the integrated programme for administering and supporting the conciliation and arbitration procedures for the resolution of disputes, as required of him under the Convention; and further requested the Secretary-General to prepare a comprehensive report on the impact of entry into force of the Convention on related existing or proposed instruments and programmes throughout the United Nations system, and to submit the report to the Assembly at its fifty-first session.

5. INTERNATIONAL COURT OF JUSTICE[194] [195]

Cases before the Court [196]

A. Contentious cases before the full Court

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1. *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)*

The public sittings to hear the oral arguments of the Parties, scheduled to open on 12 September 1994, were postponed *sine die* at the request of the Parties.

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2. *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*

At a public sitting held on 3 February 1994, the Court delivered its Judgment[197], a summary of which is given below, followed by the text of the operative paragraph.

I. *Review of the proceedings and statement of claims* (paras, 1-21)

The Court outlined the successive stages of the proceedings as from the time the case had been brought before it (paras. 1-16) and set out the submissions of the Parties (paras. 17-21). It recalled that the proceedings had been instituted by two successive notifications of the Special Agreement constituted by the 1989 "Framework Agreement [Accord-Cadre] on the Peaceful Settlement of the Territorial Dispute between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Chad" — the notification filed by Libya on 31 August 1990 and the communication from Chad filed on 3 September 1990, read in conjunction with the letter from the Agent of Chad of 20 September 1990.

In the light of the Parties' communications to the Court, and their submissions, the Court observed that Libya proceeded on the basis that there was no existing boundary, and asked the Court to determine one, while Chad proceeded on the basis that there was an existing boundary, and asked the Court to declare what that boundary was. Libya considered that the case concerned a dispute regarding attribution of territory, while in Chad's view it concerned a dispute over the location of a boundary.

The Court then referred to the lines claimed by Chad and by Libya, as illustrated in the attached sketch-map No. 1 (see below); Libya's claim was on the basis of a coalescence of rights and titles of the indigenous inhabitants, the Senoussi Order, the Ottomn Empire, Italy and Libya itself; and that of Chad was on the basis of

a Treaty of Friendship and Good Neighbourliness concluded by France and Libya on 10 August 1955, or, alternatively, on French *effectivites*, either in relation to, independly of, the provisions of earlier treaties.

II. *The 1955 Treaty of Friendship and Good -Neighbourliness between France and Libya* (paras. 23-56)

Having drawn attention to the long and complex historical background to the dispute and having enumerated a number of conventional instruments reflecting that history and which appeared to be relevant, the Court observed that it was recognized by both Parties that the 1955 Treaty of Friendship and Good-Neighbourliness between France and Libya was the logical starting point for consideration of the issues before the Court. Neither Party questioned the validity of the 1955 Treaty, nor did Libya question Chad's right to invoke against Libya any such provisions thereof as related to the frontiers of Chad. The 1955 Treaty, a complex treaty, comprised, in addition to the Treaty itself, four appended Conventions and eight annexes; it dealt with a broad range of issues concerning the future relationship between the two parties. It was provided by article 9 of the Treaty that the Conventions and Annexes appended to it formed an integral part of the Treaty. One of the matters specifically addressed was the question of frontiers, dealt with in article 3 and annex I.

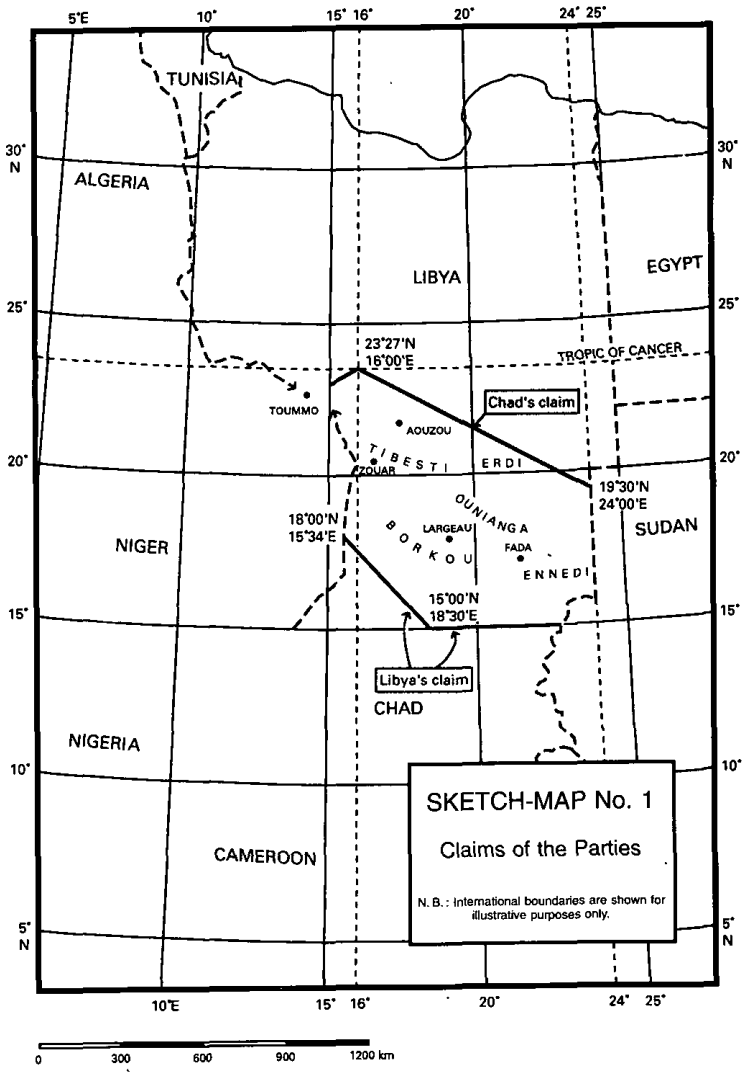
The Court then examined article 3 of the 1955 Treaty, together with the annex to which that article referred, in order to decide whether or not that Treaty resulted in a conventional boundary between the territories of the Parties. It observed that if the 1955 Treaty did result in a boundary, this furnished the answer to the issues raised by the Parties: it would be a response at one and the same time to the Libyan request to determine the limits of the respective territories of the Parties and to the request of Chad to determine the course of the frontier.

Article 3 of the Treaty began as follows:

> "The two High Contracting Parties recognize that the frontiers between the territories of Tunisia, Algeria, French West Africa and French Equatorial Africa on the one hand, and the territory of Libya on the other, are those that result from the international instruments in force on the date of the constitution of the United Kingdom of Libya as listed in the attached Exchange of Letters (Ann. I)."

Annex I to the Treaty comprised an exchange of letters which, after quoting Article 3, began as follows:

> "The reference is to [*II s'agit de*] the following texts:
>
> — the Franco-British Convention of 14 June 1898;
>
> — the Declaration completing the same, of 21 March 1899;
>
> — the Franco-Italian Agreements of 1 November 1902;
>
> — the Convention between the French Republic and the Sublime Porte, of 12 May 1910;
>
> — the Franco-British Convention of 8 September 1919;
>
> — the Franco-Italian Arrangement of 12 September 1919."


5°E
10°
15°
16°
20°
24°
25°
TUNISIA
ALGERIA
LIBYA
EGYPT
30° N
25°
20°
15°
10°
5° N
23°27'N
16°00'E
TROPIC OF CANCER
Chad's claim
TOUMMO
AOUZOU
TIBESTI
ERDI
ZOUAR
19°30'N
24°00'E
OUNIANGA
BORKOU
LARGEAU
FADA
ENNEDI
SUDAN
NIGER
18°00'N
15°34'E
15°00'N
18°30'E
Libya's claim
CHAD
NIGERIA
CAMEROON
SKETCH-MAP No. 1
Claims of the Parties
N. B.: International boundaries are shown for illustrative purposes only.
10°E
0
300
600
900
1200 km

The Court recalled that, in accordance with the rules of general international law, reflected in article 31 of the 1969 Vienna Convention on the Law of Treaties, a treaty had to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Interpretation had to be based above all upon the text of the treaty. As a supplementary measure recourse might be had to means of interpretation such as the preparatory work of the treaty and the circumstances of its conclusion.

According to article 3 of the 1955 Treaty, the parties "recognize [*reconnaissent*] that the frontiers … are those that result" from certain international instruments. The word "recognize" used in the Treaty indicates that a legal obligation is undertaken. To recognize a frontier is essentially to "accept" that frontier, that is, to draw legal consequences from its existence, to respect it and to renounce the right to contest it in future.

In the view of the Court, the terms of the Treaty signified that the parties thereby recognized complete frontiers between their respective territories as resulting from the combined effect of all the instruments listed in annex I; no relevant frontier was to be left undefined and no instrument listed in Annex I was superfluous. It would be incompatible with a recognition couched in such terms to contend, as Libya had done, that only some of the specified instruments contributed to the definition of the frontier, or that a particular frontier remained unsettled. So to contend would be to deprive article 3 of the Treaty, and annex I, of their ordinary meaning. By entering into the Treaty, the parties recognized the frontiers to which the text of the Treaty referred; the task of the Court was thus to determine the exact content of the undertaking entered into.

The fixing of a frontier depended on the will of the sovereign States directly concerned. There was nothing to prevent the parties from deciding by mutual agreement to consider a certain line as a frontier, whatever the previous status of that line. If it was already a territorial boundary, it was confirmed purely and simply. If it was not previously a territorial boundary, the agreement of the parties to "recognize" it as such invested it with a legal force which it had previously lacked. International conventions and case-law evidenced a variety of ways in which such recognition could be expressed. The fact that article 3 of the Treaty specified that the frontiers recognized were "those that result from the international instruments" defined in annex I meant that all of the frontiers resulted from those instruments. Any other construction would be contrary to the actual terms of article 3 and would render completely ineffective the reference to one or other of those instruments in annex I. Article 3 of the 1955 Treaty referred to the international instruments "*en vigueur*" (in force) on the date of the constitution of the United Kingdom of Libya, "*tels qu'ils sont definis*" (as listed) in the attached exchange of letters; Libya contended that the instruments mentioned in Annex I and relied on by Chad were no longer in force at the relevant date. The Court was unable to accept those contentions. Article 3 did not refer merely to the international instrument "*en vigueur*" on that date "*tels qu'ils sont definis*" (as listed) in annex I. To draw up a list of governing instruments while leaving to subsequent scrutiny the question whether they were in force would have been pointless. It was clear to the Court that the parties had agreed to consider the instruments listed as being in force for the purposes of article 3, since otherwise they would not have referred to them in the annex. The text of article 3 clearly conveyed the intention of the parties to reach a definitive settlement of the question of their common frontiers. Article 3 and annex I were intended to define frontiers by refer-

ence to legal instruments which would yield the course of such frontiers. Any other construction would have been contrary to one of the fundamental principles of interpretation of treaties, consistently upheld by international jurisprudence, namely that of effectiveness.

The object and purpose of the Treaty as stated in the preamble confirmed the interpretation of the Treaty given above, inasmuch as that object and purpose led naturally to the definition of the territory of Libya, and thus the definition of its boundaries.

The conclusions which the Court had reached were further reinforced by an examination of the context of the Treaty, and, in particular, of the Convention of Good-Neighbourliness between France and Libya, concluded between the Parties at the same time as the Treaty, as well as by the *travaux preparatoires*.

III. *The frontier line* (paras. 57-65)

Having concluded that the contracting parties wished, by the 1955 Treaty, and particularly by its article 3, to define their common frontier, the Court examined what was the frontier between Libya and Chad which resulted from the international instruments listed in annex I.

(*a*) To the east of the line of 16 longitude (paras 58-50)

The Franco-British Declaration of 1899, which complemented the Convention of 1898, defined a line limiting the French zone (or sphere of influence) to the north-east in the direction of Egypt and the Nile Valley, already under British control. It provided in paragraph 3 as follows:

> "It is understood, in principle, that to the north of the 15th parallel the French zone shall be limited to the north-east and east by a line which shall start from the point of intersection of the Tropic of Cancer with the 16th degree of longitude east of Greenwich (13º 40' east of Paris), shall run thence to the south-east until it meets the 24th degree of longitude east of Greenwich (21º 40' east of Paris), and shall then follow the 24th degree until it meets, to the north of the 15th parallel of latitude, the frontier of Darfur as it shall eventually be fixed."

Different interpretations of this text were possible, since the point of intersection of the line with the 24th degree of longitude east was not specified, and the original text of the Declaration was not accompanied by a map showing the course of the line agreed. However, a few days after the adoption of that Declaration, the French authorities published its text in a *Livre jaune* including a map. That map showed the line as running not directly south-east, but rather in an east-south-east direction, so as to terminate at approximately the intersection of the 24º meridian east with the parallel 19º of latitude north.

For the purposes of the judgement, the question of the position of the limit of the French zone might be regarded as resolved by the Convention of 8 September 1919 signed at Paris between Great Britain and France, supplementary to the 1899 Declaration.

Its concluding paragraph provided:

> "It is understood that nothing in the Convention prejudices the interpretation of the Declaration of 21 March, 1899, according to which the words in article 3 '… shall run thence to the south-east until it meets the 24th degree of longitude east of Greenwich (21º 40' east of Paris)' are accepted as meaning

'… shall run thence in a south-easterly direction until it meets the 24th degree of longitude east of Greenwich at the intersection of that degree of longitude with parallel 19º 30' degrees of latitude'."

The 1919 Convention presented this line as an interpretation of the Declaration of 1899; in the view of the Court, for the purposes of the judgement, there was no reason to categorize it either as a confirmation or as a modification of the Declaration. Inasmuch as the two States parties to the Convention were those that concluded the Declaration of 1899, there could be no doubt that the "interpretation" in question constituted, from 1919 onwards, and as between them, the correct and binding interpretation of the Declaration of 1899. It was opposable to Libya by virtue of the 1955 Treaty. For those reasons, the Court concluded that the line described in the 1919 Convention represented the frontier between Chad and Libya to the east of the line of 16º longitude.

(*b*) To the west of the line of 16º longitude (paras. 61-62)

The Franco-Italian Agreements (Exchange of Letters) of 1 November 1902 stated that:

"the limit to French expansion in North Africa, as referred to in the above mentioned letter . . . dated 14 December 1900, is to be taken as corresponding to the frontier of Tripolitania as shown on the map annexed to the Declaration of 21 March 1899".

The map referred to could only have been the map in the *Livre jaune*, which showed a pecked line indicating the frontier of Tripolitania. That line had therefore to be examined by the Court.

(*c*) The complete line (paras. 63-65)

It was clear that the eastern end-point of the frontier would lie on the meridian 24º east, which was at that point the boundary of the Sudan. To the west, the Court was not asked to determine the tripoint Libya-Niger-Chad; Chad in its submissions merely asked the Court to declare the course of the frontier "as far as the fifteenth degree east of Greenwich". In any event the Court's decision in this respect, as in the *Frontier Dispute* case, would "not be opposable to Niger as regards the course of that country's frontiers". [198]

Between 24º and 16º east of Greenwich, the line was determined by the Anglo-French Convention of 8 September 1919: i.e., the boundary was a straight line from the point of intersection of the meridian 24º east with the parallel 19º 30' north to the point of intersection of the meridian 16 east with the Tropic of Cancer. From the latter point, the line was determined by the Franco-Italian exchange of letters of 1 November 1902, by reference to the *Livre jaune* map: i.e., this line, as shown on that map, ran towards a point immediately to the south of Toummo; before it reached that point, however, to crossed the meridian 15º east, at some point on which from 1930 onwards, had been situated the commencement of the boundary between French West Africa and French Equatorial Africa. This line was confirmed by references in the Particular Convention annexed to the 1955 Treaty to a place called Muri Idie.

Chad, which in its submissions asked the Court to define the frontier as far west as the 15º meridian, had not defined the point at which in its contention the frontier intersected that meridian. Nor had the Parties indicated to the Court the exact coordinates of Toummo in Libya. However, on the basis of the information available, and in particular the maps produced by the Parties, the Court had come to

the conclusion that the line of the *Live jaune* map crossed the 15º meridian east at the point of intersection of that meridian with the parallel 23º of north latitude. In that sector, the frontier was thus constituted by a straight line from the latter point to the point of intersection of the meridian 16º east with the Tropic of Cancer.

IV. *Subsequent attitudes of the Parties* (paras. 66-71)

Having concluded that a frontier resulted from the 1955 Treaty, and having established where that frontier lay, the Court considered the subsequent attitudes of the Parties to the question of frontiers. It found that no subsequent agreement, either between France and Libya, or between Chad and Libya, had called in question the frontier in that region deriving from the 1955 Treaty. On the contrary, if one considered treaties subsequent to the entry into force of the 1955 Treaty, there was support for the proposition that after 1955, the existence of a determined frontier had been accepted and acted upon by the Parties.

The Court then examined the attitudes of the Parties, subsequent to the 1955 Treaty, on occasions when matters pertinent to the frontiers had come up before international forums and noted the consistency of Chad's conduct in relation to the location of its boundary.

V. *Permanent boundary established* (paras. 72-73)

The Court finally stated that, in its view, the 1955 Treaty, notwithstanding the provisions in article 11 to the effect that "the present Treaty is concluded for a period of 20 years", and for unilateral termination of the Treaty, had to be taken to have determined a permanent frontier. There was nothing in the 1955 Treaty to indicate that the boundary agreed was to be provisional or temporary; on the contrary it bore all the hallmarks of finality. The establishment of that boundary was a fact which, from the outset, had had a legal life of its own, independently of the fate of the 1955 Treaty. Once agreed, the boundary stood, for any other approach would have vitiated the fundamental principle of the stability of boundaries. A boundary established by treaty thus achieved a permanence which the treaty itself did not necessarily enjoy. When a boundary had been the subject of agreement, the continued existence of that boundary had been the subject of agreement, the continued existence of that boundary was not dependent upon the continuing life of the treaty under which the boundary had been agreed.

Operative paragraph (para. 77)

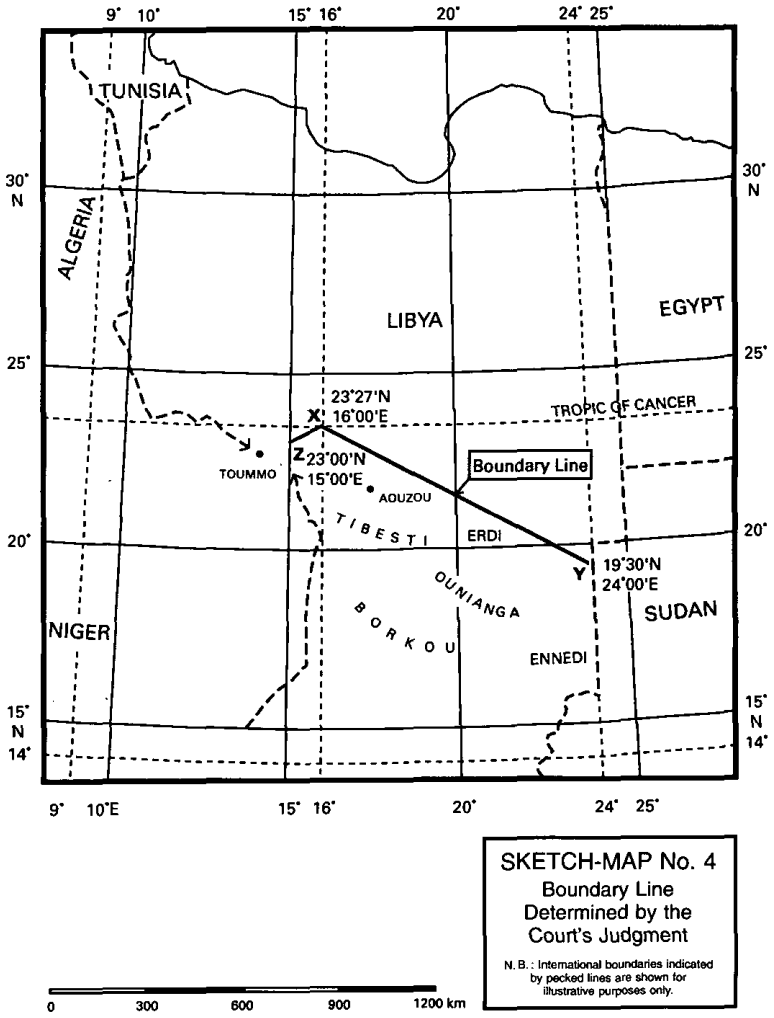
"THE COURT,

"By 16 votes to 1,

"(1) *Finds* that the boundary between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Chad is defined by the Treaty of Friendship and Good Neighbourliness concluded on 10 August 1955 between the French Republic and the United Kingdom of Libya;

"(2) *Finds* that the course of that boundary is as follows:

"From the point of intersection of the 24th meridian east with the parallel 19º 30' of latitude north, a straight line to the point of intersection of the Tropic of Cancer with the 16th meridian east; and from that point a straight line to the point of intersection of the 15th meridian east and the parallel 23º


9° 10°
15° 16°
20°
24° 25°
TUNISIA
30° N
ALGERIA
LIBYA
EGYPT
25°
23°27'N
16°00'E
X
TROPIC OF CANCER
Z
23°00'N
15°00'E
TOUMMO
AOUZOU
Boundary Line
TIBESTI
ERDI
20°
19°30'N
24°00'E
Y
OUNIANGA
BORKOU
SUDAN
NIGER
ENNEDI
15° N
14°
9° 10°E
0 300 600 900 1200 km
SKETCH-MAP No. 4
Boundary Line
Determined by the
Court's Judgment
N. B. : International boundaries indicated by pecked lines are shown for illustrative purposes only.

of latitude north; these lines are indicated, for the purpose of illustration, on sketch-map No. 4 on page 39 of this Judgment [See above.]

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Ago, Schwebel, Bedjaouni, Ni, Evenen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Ajibola, herczegh; *Judge* ad hoc Abi-Saab;

AGAINST: *Judge* ad hoc Sette-Camara."

Judge Ago appended a declaration to the Judgement; [199] Judges Shahabuddeen and Ajibola appended separate opinions;[200] and Judge ad hoc Sette-Camara appended a dissenting opinion. [201]

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3. *East Timor (Portugal v. Australia)*

Portugal chose Mr. Antonio de Arruda Ferrer-Correia and Australia Sir Ninian Stephen to sit as judges ad hoc. By letter received on 14 July 1994, Mr. Antonio de Arruda Ferrer-Correia resigned as a judge ad hoc.

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4. *Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal)*

After several exchange of letters regarding extended time limits, the President again convened the Agents of the Parties on 10 March 1994. At the meeting the Agents handed the President the text of an agreement entitled "Management and Cooperation Agreement between the Government of the Republic of Guinea-Bissau and the Government of the Republic of Senegal", done at Dakar on 14 October 1993 and signed by the two Heads of State. The Agreement, which provides, *inter alia*, for the joint exploitation, by the two Parties, of a "maritime zone situated between the 268º and 220º azimuths drawn from Cape Roxo" (art. 1), and the establishment of an "International Agency for the exploitation of the zone" (art. 4), will enter into force, according to the terms of its article 7,

> "upon conclusion of the agreement concerning the establishment and functioning of the International Agency with the exchange of the instruments of ratification of both agreements by both States".

In letters dated 16 March 1994, addressed to the Presidents of both States, the President of the Court expressed his satisfaction and informed them that the case would be removed from the list, in accordance with the terms of the Rules of Court, as soon as the Parties had notified him of their decision to discontinue the proceedings.

5. *Maritime Delimination and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*

Public sittings were held from 28 February to 11 March 1994. In the course of eight public sittings, the Court heard statements on behalf of Qatar and Bahrain. The Vice-President of the Court put questions to both the Parties.

At a public sitting held on 1 July 1994, the Court delivered a judgement, [202] a summary of which is given below, followed by the text of the operative paragraph.

I. *History of the case* (paras. 1-14)

In its judgement the Court recalled that on 8 July 1991 the Minister for Foreign Affairs of the State of Qatar had filed in the Registry of the Court an Application instituting proceedings against the State of Bahrain in respect of certain disputes between the two States relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States.

The Court then recited the history of the case. It recalled that in its Application Qatar had founded the jurisdiction of the Court upon two agreements between the Parties stated to have been concluded in December 1987 and December 1990 respectively, the subject and scope of the commitment to jurisdiction being determined, according to the Applicant, by a formula proposed by Bahrain to Qatar on 26 October 1988 and accepted by Qatar in December 1990. Bahrain had contested the basis of jurisdiction invoke by Qatar.

The Court then referred to the different stages of the proceedings before it and to the submissions of the Parties.

II. *Summary of the circumstances in which a solution to the dispute between Bahrain and Qatar had been sought over the past two decades* (paras. 15-20)

Endeavours to find a solution to the dispute took place in the context of a mediation, sometimes referred to as "good offices", beginning in 1976, by the King of Saudi Arabia with the agreement of the Amirs of Bahrain and Qatar, which led, during a tripartite meeting in March 1983, to the approval of a set of "Principles for the Framework for Reaching a Settlement". The first of those principles specified that:

> "All issues of dispute between the two countries, relating to sovereignty over the islands, maritime boundaries and territorial waters, are to considered as complementary, indivisible issues, to be solved comprehensively together."

Subsequently, in 1987, the King of Saudi Arabia sent the Amirs of Qatar and Bahrain letters in identical terms, in which he put forward new proposals. The Saudi proposals which were adopted by the two Heads of State, included four points, the first of which was that:

> "All the disputed matters shall be referred to the International Court of Justice, at The Hague, for a final ruling binding upon both parties, who shall have to execute its terms."

The third provided for formation of a Tripartite Committee, composed of representatives of the States of Bahrain and Qatar and of the Kingdom of Saudi Arabia,

> "for the purpose of approaching the International Court of Justice, and satisfying the necessary requirements to have the dispute submitted to the Court in accordance with its regulations and instructions so that a final ruling, binding upon both parties, be issued."

Then, in 1988, following an initiative by Saudi Arabia, the Heir Apparent of Bahrain, when on a visit to Qatar, transmitted to the Heir Apparent of Qatar a text (subsequently known as the "Bahraini formula") which read as follows:

"*Question*

"The Parties request the Court to decide any matter of territorial right or other title or interest which may be a matter of difference between them; and to draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters."

The good offices of King Fahd did not lead to the desired outcome within the time limit thus fixed, and on 8 July 1991 Qatar instituted proceedings before the Court against Bahrain.

According to Qatar, the two States "have made express commitments in the Agreements of December 1987 . . . and December 1990 . . ., to refer their disputes to the . . . Court". Qatar therefore considered that the Court had been enabled "to exercise jurisdiction to adjudicate upon those disputes" and, as a consequence, upon the Application of Qatar.

Bahrain maintained on the contrary that the 1990 Minutes did not constitute a legally binding instrument. It went on to say that, in any event, the combined provisions of the 1987 exchanges of letters and of the 1990 Minutes were not such as to enable Qatar to seise the Court unilaterally and concluded that the Court lacked jurisdiction to deal with the Application of Qatar.

III. *The nature of the exchanges of letters of 1987 and of the 1990 Doha Minutes* (paras. 21-30)

The Court began by enquiring into the nature of the texts upon which Qatar relied before turning to an analysis of the content of those texts. It observed that the Parties agreed that the exchanges of letters of December 1987 constituted an international agreement with binding force in their mutual relations, but that Bahrain maintained that the Minutes of 25 December 1990 were no more than a simple record of negotiations, similar in nature to the Minutes of the Tripartite Committee; that accordingly they did not rank as an international agreement and could not, therefore, serve as a basis for the jurisdiction of the Court.

After examining the 1990 Minutes (see above) the Court observed that they were not a simple record of a meeting, similar to those drawn up within the framework of the Tripartite Committee; they did not merely give an account of discussions and summarize points of agreement and disagreement. They enumerated the commitments to which the Parties had consented. They thus created rights and obligations in international law for the Parties. They constituted an international agreement.

Bahrain maintained that the signatories to the 1990 Minutes never intended to conclude an agreement of that kind. The Court did not however find in necessary to consider what might have been, in that regard, the intentions of the Foreign Minister of Qatar. Nor did it accept Bahrain's contention that the subsequent conduct of the Parties showed that they had never considered the 1990 Minutes to be an agreement of this kind.

IV. *The content of the exchanges of letters of 1987 and of the 1990 Doha Minutes* (paras. 31-39)

Turning to an analysis of the content of these texts, and of the rights and obligations to which they gave rise, the Court first observed that, by the exchanges of letters of December 1987 (see above), Bahrain and Qatar had entered into an under-

taking to refer all the disputed matters to the Court and to determine, with the assistance of Saudi Arabia (in the Tripartite Committee), the way in which the Court was to be seised in accordance with the undertaking thus given.

The question of the determination of the "disputed matters" was only settled by the Minutes of December 1990. Those Minutes placed on record the fact that Qatar had finally accepted the Bahraini formula. Both Parties thus accepted that the Court, once seised, should decide "any matter of territorial right or other title or interest which may be a matter of difference between [the Parties]"; and should "draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters".

The formula thus adopted determined the limits of the dispute with which the Court would be asked to deal. It was devised to circumscribe that dispute, but, whatever the manner of seisin, it left open the possibility for each of the Parties to present its own claims to the Court, within the framework thus fixed. However, while the Bahraini formula permitted the presentation of distinct claims by each of the Parties, it nonetheless presupposed that the whole of the dispute would be submitted to the Court.

The Court noted that at present it had before it solely an Application by Qatar setting out the particular claims of that State within the framework of the Bahraini formula. Article 40 of the Court's Statute provided that when cases were brought before the Court "the subject of the dispute and the parties shall be indicated". In the instant case the identity of the parties presented no difficulty, but the subject of the dispute was another matter.

In the view of Bahrain the Qatar Application comprise only some of the elements of the subject matter intended to be comprised in the Bahraini formula and that had in effect been acknowledged by Qatar.

The Court consequently decided to afford the Parties the opportunity to ensure the submission to the Court of the whole of the dispute as it was comprehended within the 1990 Minutes and the Bahraini fromula, to which they had both agreed. The Parties might do so by a joint act or by separate acts; the result should in any case be that the Court had before it "any matter of territorial right or other title or interest which may be a matter of difference between" the Parties, and a request that it "draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters".

Operative paragraph (para. 41)

"THE COURT,

"(1) By 15 votes to 1,

"*Finds* that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987, and between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed 'Minutes' and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, are international agreements creating rights and obligations for the Parties;

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Sir Robert Jennings, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma; *Judges* ad hoc Valticos, Ruda;

AGAINST: *Judge* Oda.

"(2) By 15 votes to 1,

"*Finds* that by the terms of those agreements the Parties have undertaken to submit to the Court the whole of the dispute between them, as circumscribed by the text proposed by Bahrain to Qatar on 26 October 1988, and accepted by Qatar in December 1990, referred to in the 1990 Doha Minutes as the 'Bahraini formula';

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Sir Robert Jennings, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma; *Judges* ad hoc Valticos, Ruda;

AGAINST: *Judge* Oda.

"(3) By 15 votes to 1,

"*Decides* to afford the Parties the opportunity to submit to the Court the whole of the dispute;

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Sir Robert Jennings, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma; Judges ad hoc Valticos, Ruda;

AGAINST: *Judge* Oda.

"(4) By 15 votes to 1,

"*Fixes* 30 November 1994 as the time limit within which the Parties, are jointly or separately, to take action this end;

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Sir Robert Jennings, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma; *Judges* ad hoc Valticos, Ruda;

AGAINST: *Judge* Oda.

"(5) By 15 votes to 1,

"Reserves any other matters for subsequent decision.

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Sir Robert Jennings, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma; *Judges* ad hoc Valticos, Ruda;

AGAINST: *Judge* Oda."

Judge Shahabuddeen appended a declaration to the judgement;[203] Vice-President Schwebel and Judge ad hoc Valticos appended separate opinions;[204] and Judge Oda appended a dissenting opinion.[205]

On 30 November 1994, the date fixed in the judgement of 1 July, the Court received from the Agent of Qatar a letter transmitting an "Act to comply with paragraphs (3) and (4) of the operative paragraph 41 of the Judgement of the Court dated 1 July 1994". On the same day, the Court received a communication from the Agent of Bahrain, transmitting the text of a document entitled "Report of the State of Bahrain to the International Court of Justice on the attempt by the Parties to implement the Court's Judgement of 1 July 1994."

In view of those replies of Qatar and Bahrain to the requests made in the judgement of 1 July 1994, the Court resumed dealing with the case.

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6. *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*

By an Order of 14 July 1993,[206] the Court decided that, as provided in article 3, paragraph 2, of the Special Agreement and Article 46, paragraph 1, of the Rules of Court, each Party should file a Memorial and a Counter-Memorial, within the same time limit, and fixed 2 May 1994 and 5 December 1994 as the time limits for the filing of the Memorial and Counter-Memorial respectively. The Memorials and Counter-Memorials were filed within the prescribed time limits.

Slovakia chose Mr. Krzysztof J. Skubiszewski to sit as judge ad hoc.

By an Order of 20 December 1994, [207] the President of the Court, taking into account the views of the Parties, fixed 20 June 1995 as the time limit for the filing of a Reply by each of the Parties. Those Replies were filed within the prescribed time limit.

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

By an Order of 18 January 1994,[208] the Court fixed 1 July 1994 as the time limit within which the Islamic Republic of Iran could present a written statement of its observations and submissions on the objections. That written statement was filed within the prescribed time limit.

8. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*

On 29 March 1994, the Republic of Cameroon filed in the Registry of the Court an Application instituting proceedings against the Federal Republic of Nigeria in a dispute concerning the question of sovereignty over the peninsula of Bakassi and requesting the Court to determine the course of the maritime frontier between the two States in so far as that frontier had not already been established in 1975.

As a basis for the jurisdiction of the Court, the Application refers to the declarations made by Cameroon and Nigeria under Article 36, paragraph 2, of the Statute of the Court, by which they accept that jurisdiction as compulsory.

In the Application Cameroon refers to "an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities on the Bakassi Peninsula", resulting "in great prejudice to the Republic of Cameroon", and requests the Court to adjudge and declare:

"*(a)* That sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that that Peninsula is an integral part of the territory of Cameroon;

(b) That the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidetis juris*);

(c) That by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law;

(d) That the Federal Republic of Nigeria, by militarily occupying the Cameroonian Peninsula of Bakassi, has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;

(e) That in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian Peninsual of Bakassi;

(e') That the internationally unlawful acts referred to under *(a)*, *(b)*, *(c)*, *(d)*, and *(e)* above involve the responsibility of the Federal Republic of Nigeria;

(e") That, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be deterined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria;

(f) In order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Re-

public of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions."

On 6 June 1994, Cameroon filed in the Registry of the Court an Additional Application "for the purpose of extending the subject of the dispute" to a further dispute described as relating essentially "to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad", while also asking the Court to specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea. Cameroon requested the Court to adjudge and declare:

"*(a)* That sovereignty over the disputed parcel in the area of Lake Chad is Cameroonian, by virtue of international law, and that that parcel is an integral part of the territory of Cameroon;

(b) That the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidetis juris*), and its recent legal commitments concerning the demarcation of frontiers in Lake Chad;

(c) That the Federal Republic of Nigeria, by occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad, has violated and is violating its obligations under treaty law and customary law;

(d) That in view of these legal obligations, mentioned above, the Federal Republic of Nigeria has the express duty of effecting an immediate and unconditional withdrawal of its troops from Cameroonian territory in the area of Lake Chad;

(e) That the internationally unlawful acts referred to under *(a)*, *(b)*, and *(d)* above involve the responsibility of the Federal Republic of Nigeria;

(e') That consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria;

(f) That in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of the Federal Republic of Nigeria in regard to the legal instruments defining the frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea."

Cameroon further requested the Court to join the two Applications "and to examine the whole in a single case".

At a meeting between the President of the Court and representatives of the Parties held on 14 June 1994, the Agent of Nigeria indicated that his Government had no objection to the Additional Application being treated as an amendment to the initial Application, so that the Court could deal with the whole as one case.

Cameroon chose Mr. Kéba Mbaye and Nigeria Prince Bola A. Ajibola to sit as judges ad hoc.

By an Order of 16 June 1994, the Court, seeing no objection to such a procedure, fixed 16 March 1995 as the time limit for filing the Memorial of Cameroon, and 18 December 1995 as the time limit for filing the Counter-Memorial of Nigeria. The Memorial was filed within the prescribed time limit.

B. Requests for advisory opinion

1. *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*

By an Order of 20 June 1994, [209] the President of the Court, following requests from several of the aforesaid States [those of its Member States who are entitled to appear before the Court], extended that time limit to 20 September 1994.

2. *Legality of the Threat or Use of Nuclear Weapons*

On 15 December 1994, the General Assembly of the United Nations adopted resolution 49/75 K, entitled "Request for an Advisory Opinion from the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons", by which, pursuant to Article 96, paragraph 1, of the Charter of the United Nations, it requested the Court:

> "urgently to render its advisory opinion on the following question: 'Is the threat or use of nuclear weapons in any circumstance permitted under international law?'"

The request was transmitted to the Court by the Secretary-General of the United Nations in a letter dated 19 December 1994, received in the Registry by facsimile on 20 December 1994 and filed in the original on 6 January 1995.

6. INTERNATIONAL LAW COMMISSION[210]

Forty-sixth Session of the Commission[211]

The International Law Commission held its forty-sixth session at Geneva from 2 May to 22 July 1994. The Commission considered all items on its agenda.

On the question of the draft Code of Crimes against the Peace and Security of Mankind, the Commission began the second reading of the draft Code, adopted on first reading at its forty-third (1991) session. It had before it the twelfth report of the Special Rapporteur,[212] which covered draft articles 1 to 15. After considering these articles in plenary, the Commission referred them to the Drafting Committee.

In the framework of the topic "Draft Code of Crimes against the Peace and Security of Mankind", the Commission re-established the Working Group on the Draft Statute for an International Criminal Court. The Commission received from the Working Group three reports, the last of which contained the text of a draft statute accompanied by commentaries.[213] The Commission adopted the draft statute and the commentaries to the 60 articles comprising it, and recommended to the General Assembly that it convene an international conference of plenipotentiaries to study the draft statute and to conclude a convention on the establishment of an international criminal court.

With respect to the topic "The law of the non-navigational uses of international watercourses", the Commission considered the topic on the basis of the second report of the Special Rapporteur[214] and adopted on second reading a complete set of draft articles and a draft resolution on transboundary confined groundwater. It recommended the draft articles on the law of the non-navigational uses of international watercourses and the resolution to the General Assembly, and further recommended the elaboration of a convention by the Assembly or by an international conference of plenipotentiaries on the basis of the draft articles.

Regarding the topic "State responsibility", the Commission considered chapter II of the fifth report[215] and chapter III of the sixth report[216] of the Special Rapporteur, both devoted to the question of the consequences of internationally wrongful acts characterized as crimes under article 19 of part one of the draft articles. The Commission also considered chapter II of the Special Rapporteur's sixth report[217] which presented a reappraisal of the pre-countermeasures dispute settlement provisions so far envisaged for the draft on State responsibility. On the basis of the recommendations of the Drafting Committee as submitted at the previous and current sessions, the Commission provisionally adopted articles 11 (Countermeasures by an injured State), 13 (Proportionality) and 14 (Prohibited countermeasures). The Commission deferred action on article 12 (Conditions relating to resort to countermeasures).

Concerning the question of international liability for injurious consequences arising out of acts not prohibited by international law, the Commission had before it the tenth report of the Special Rapporteur,[218] but its consideration was deferred to the following year. On the basis of the recommendations of the Drafting Committee as submitted by the Committee at the previous and current sessions, the Commission provisionally adopted a number of articles.

Consideration by the General Assembly

At its forty-ninth session, the General Assembly had before it the report of the International Law Commission on the work of its forty-sixth session.[219] By its resolution 49/51 of 9 December 1994,[220] adopted on the recommendation of the Sixth Committee,[221] the General Assembly took note of the report of the International Law Commission on the work of its forty-sixth session; expressed its appreciation to the Commission for the work accomplished at that session, in particular for the completion of a draft statute articles on the law of the non-navigational uses of international watercourses; endorsed the intention of the Commission to undertake work on the topics "The law and practice relating to reservations to treaties" and "State succession and its impact on nationality of natural and legal persons", on the understanding that the final form to be given to the work on those topics should be decided after a preliminary study was presented to the General Assembly; and also 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[222]

TWENTY-SEVENTH SESSION OF THE COMMISSION[223]

The United Nations Commission on International Trade Law held its twenty-seventh session in New York from 31 May to 17 June 1994.

At the twenty-seventh session, UNCITRAL, recalling its adoption of the Model Law on Procurement of Goods and Construction at its twenty-sixth session,[224] adopted the Model Law on Procurement of Goods, Construction and Services, with the understanding that the current Model Law did not supersede the earlier Model Law. The Commission also adopted the Guide to Enactment of the Model Law on Procurement of Goods, Construction and Services at the current session.

Concerning the question of international commercial arbitration, the Commission had before it draft Guidelines for Preparatory Conferences in Arbitral Proceedings.[225] The Commission requested the United Nations Secretariat to revise the draft Guidelines in the light of the discussions at the current session and to submit a revised draft to the Commission at its twenty-eighth session in 1995 with a view to the finalization of the text at that session.

With respect to the topic of guarantees and stand-by letters of credit, the Commission at its twenty-second session in 1989 had entrusted the work on a uniform law on guarantees and stand-by letters of credit to the Working Group on International Contract Practices. At the current session, the Commission had before it reports of the twentieth and twenty-first sessions of the Working Group,[226] at which the latter had continued the preparation of a draft convention on independent guarantees and stand-by letters of credit. The Commission requested the Working Group to proceed with its work so as to present the draft convention to the commission at the twenty-eighth session in 1995.

Regarding legal issues in electronic data interchange (EDI), the Commission had before it the reports of the Working Group on Electronic Data Interchange on the work of its twenty-sixth and twenty-seventh sessions dealing with the preparation of legal rules on EDI.[227] It was the view that the Working Group might not be able to complete its work within one year and submit the model statutory provisions to the Commission at its next session, but that, however, a draft set of basic "core" provisions could be completed by the Working Group at its twenty-eighth or twenty-ninth session.

Concerning "Case Law on UNCITRAL Texts" (CLOUT), the Commission at the current session noted the existence of three editions of the CLOUT abstracts series containing abstracts on 52 court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration.[228]

Consideration by the General Assembly

At its forty-ninth session, the General Assembly, By its resolution 49/55 of 9 December 1994,[229] adopted on the recommendation of the Sixth Committee,[230] took note of the report of the United Nations Commission on International Trade Law on the work of its twenty-seventh 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; welcomed the completion of the setting up of the trust fund for the United Nations Commission on International Trade Law to grant travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General, pursuant to paragraph 5 of resolution 48/32 of 9 December 1993; and appealed to Governments, the relevant United Nations organs, organizations, institutions and individuals to make voluntary contributions to the trust fund. By its resolution 49/54, also of 9 December 1994,[231] adopted on the recommendation of the Sixth Committee,[232] the Assembly took note of the completion and adoption by UNCITRAL of the UNCITRAL Model Law on Procurement of Goods, Construction and Services[233] together with the Guide to Enactment of the Model Law,[234] and recommended that, in view of the desirability of improvement and uniformity of the laws of procurement, all States give favourable consideration to the Model Law when they enacted or revised their procurement laws.

8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY AD HOC LEGAL BODIES

(*a*) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

By its resolution 49/48 of 9 December 1994,[235] adopted on the recommendation of the Sixth Committee,[236] the General Assembly, having considered the report of the Secretary-General[237] on the status of the Protocols[238] Additional to the Geneva Conventions of 1949,[239] appealed to all States parties to the Geneva Conventions of 1949 that had not yet done so to consider becoming parties to the additional Protocols at the earliest possible date; and called upon all States which were already parties to Protocol I, or those States not parties, on becoming parties to Protocol I, to make the declaration provided for under article 90 of that Protocol.

(*b*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

By its resolution 49/49 of 9 December 1994,[240] adopted on the recommendation of the Sixth Committee,[242] the General Assembly took note of the report of the Secretary-General,[242] strongly condemned acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international intergovernmental organizations and officials of such organizations, and emphasized that such acts could never be justified; urged States to observe, implement and enforce principles and rules of international law governing diplomatic and consular relations and, in particular, to ensure, in conformity with their international obligations, the protection, security and safety of the missions, representatives and officials mentioned above officially present in territories under their jurisdiction, including practical measures to prohibit in their territories illegal activities of persons, groups and organizations that encouraged, instigated, orga-

nized or engaged in the perpetration of acts against the security and safety of such missions, representatives and officials; also urged States to take all necessary measures at the national and international levels to prevent any acts of violence against the missions, representatives and officials mentioned above and to bring offenders to justice; and further urged States to take all appropriate measures, in accordance with international law, at the national and international levels to prevent any abuse of diplomatic or consular privileges and immunities, in particular serious abuses, including those involving acts of violence.

(*c*) United Nations Decade of International Law

By its resolution 49/50 of 9 December 1994,[242] adopted on the recommendation of the Sixth Committee,[244] the General Assembly, having considered the report of the Secretary-General,[245] as well as the report of the Working Group on the United Nations Decade of International Law,[246] adopted the programme for the activities for the third term (1995-1996) of the United Nations Decade of International Law as an integral part of the resolution, to which it was annexed. The Assembly also requested the Secretary-General to proceed with the organization of the United Nations Congress on Public International Law, to be held from 12 to 17 March 1995.

(*d*) Draft articles on the law of the non-navigational uses of international watercourses

By its resolution 49/52 of 9 December 1994,[247] adopted on the recommendation of the Sixth Committee,[248] the General Assembly decided that, at the beginning of the fifty-first session of the General Assembly, the Sixth Committee should convene as a working group of the whole, open to States Members of the United Nations or members of specialized agencies, for three weeks from 7 to 25 October 1996, to elaborate a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth Session.

(*e*) Establishment of an international criminal court

By its resolution 49/53 of 9 December 1994,[249] adopted on the recommendation of the Sixth Committee,[250] the General Assembly welcomed the report of the International Law Commission on the work if its forty-sixth session,[251] including the recommendations contained therein; and decided to establish an ad hoc committee, open to all States Members of the United Nations or members of specialized agencies, to review the major substantive and administrative issues arising out of the draft statute for an international criminal court prepared by the International Law Commission and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries.

(*f*) Report of the Committee on Relations with the Host Country

By its resolution 49/56 of 9 December 1996,[252] adopted on the recommendation of the Sixth Committee,[253] the General Assembly, having considered the report of the Committee on Relations with the Host Country,[254] endorsed the recommenda-

tions and conclusions of the Committee contained in paragraph 73 of its report; expressed its appreciation for the efforts made by the host country, and hoped that problems raised at the meetings of the Committee would continue to be resolved in a spirit of cooperation and in accordance with international law; voiced its concern that the amount of financial indebtedness resulting from non-compliance with contractual obligations of certain missions accredited to the United Nations has increased to alarming proportions, reminded all permanent missions of the United Nations, their personnel and Secretariat personnel of their responsibilities to meet such obligations, and expressed the hope that the efforts undertaken by the Committee, in consultation with all concerned, would lead to a solution of this problem; and welcomed the lifting of travel controls by the host country with regard to certain missions and staff members of the Secretariat of certain nationalities and expressed the hope that the remaining travel restrictions would be removed by the host country as soon as possible, and in that regard noted the positions of the affected States, of the Secretary-General and of the host country.

(*g*) Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

By its resolution 49/58 of 9 December 1994,[255] adopted on the recommendation of the Sixth Committee,[256] the General Assembly took note of the report of the Special Committee;[257] decided that the Special Committee would hold its next session from 27 February to 10 March 1995; and invited the Secretary-General to submit, before the session in 1995; a report on the question of the implementation of the provisions of the Charter, including Article 50, related to the special economic problems confronting States and arising from the carrying out of sanctions mandated under Charter VII of the Charter of the United Nations, analysing the proposals and suggestions on the issue contained in the report of the Special Committee of its 1994 session, giving due attention to the possible practical ways and means of carrying any of them out.

By its resolution 49/57 also of 9 December 1994,[258] adopted on the recommendation of the Sixth Committee,[259] the General Assembly approved the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in 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.

(*h*) Convention on the Safety of United Nations and Associated Personnel 260

By its resolution 49/59 9 December 1994,[261] adopted on the recommendation of the Sixth Committee,[262] the General Assembly adopted and opened for signature and ratification, acceptance or approval, or for accession, the Convention on the Safety of United Nations and Associated Personnel; and urged States to take all appropriate measures to ensure the safety and security of United Nations and associated personnel within their territory.

(*i*) Measures to eliminate international terrorism

By its resolution 49/60 of December 1944,[263] adopted on the recommendation of the Sixth Committee,[264] the General Assembly took note of the report of the Secretary-General;[265] approved the Declaration on Measures to Eliminate International Terrorism, the text of which was annexed to the resolution; and invited the Secretary-General to inform all States, the Security Council, the International Court of Justice and the relevant specialized agencies, organizations and organisms of the adoption of the Declaration.

(*j*) Convention on jurisdictional immunities of States and their property

By its resolution 49/61 of 9 December 1994,[266] adopted on the recommendation of the Sixth Committee,[267] the General Assembly accepted the recommendation of the International Law Commission that an international conference of plenipotentiaries be convened to consider the articles on jurisdictional immunities of States and their property and to conclude a convention on the subject.

9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[268]

In the light of the debates in the General Assembly and pursuant to a decision of its Board of Trustees, UNITAR has dedicated no funds for research *per se* during the period under review. Research materials and stocks of books and publications have been handed over to the United Nations University in Tokyo since the closure of UNITAR headquarters in New York. Some ongoing research is being completed; certain of the publications have been updated and reprinted. UNITAR now concentrates on results-oriented research, in particular research on and for training. The coordinator of UNITAR programmes was awarded a grant by the Ford Foundation for 1993/94 for a project entitled "The United Nations as a dispute settlement system: strengthening United Nations capacity for the prevention and resolution of conflict". The aim of the research is to propose recommendations for enhancing United Nations practice.

UNITAR's training programme for 1994 included a seminar on the structure and the functions of the principal organs of the United Nations; another on privileges and immunities of diplomats accredited to the United Nations at Geneva; a workshop on the procedures for the settlement of trade disputes in GATT; and a workshop on the structure, retrieval and use of United Nations documentation, all of which was held at Geneva. The joint UNITAR/International Peace Academy fellowship programme in peacekeeping and preventive diplomacy was conducted in Austria from 27 June to 9 July 1994. The training programme on the implementation of the London Guidelines, established in 1991 to assist developing countries in their efforts to implement the London Guidelines for the Exchange of Information on Chemicals in International Trade and to strengthen their chemicals management schemes, included a workshop in Mexico City and one in Santa Marta, Colombia, in 1994. UNITAR'S debt and financial management programme included a fact-finding mission in the legal aspects of debt and financial management in sub-Saharan Africa from 27 February to 30 March 1994; as well as a subregional workshop on the negotiation and drafting of loan agreements for 15 sub-Saharan African countries, held at Addis Ababa in June 1994; and a seminar in the legal asepcts of debt and financial management for senior officials of Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, held in Switzerland in February 1994.

The Institute of Policy Studies of Singapore and UNITAR initiated, in August 1994, a series of debriefing conferences on United Nations peacekeeping operations. The first conference concerned the lessons learned from the United Nations Transitional Authority in Cambodia.

At its forty-ninth session, by its resolution 49/125 of 19 December 1994,[269] adopted on the recommendation of the Second Committee,[270] the General Assembly having considered the report of the Secretary-General,[271] took note of the recommendations of the Board of Trustees of UNITAR; and urged Member States to make voluntary contributions to the restructured institute, in particular to its General Fund, so as to assure its viability and the further development of its training programmes.

B. General review of the legal activities of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANIZATION*

The International Labour Conference, which held its 81st session at Geneva from 7 to 24 June 1994, adopted several amendments to its Standing Orders:[272]

(*a*) Amendments to article 38 (Preparatory stages of single-discussion procedure), paragraphs 1 and 3;

(*b*) Amendments to article 39 (Preparatory stages of double-discussion procedure), paragraphs 1 and 2.

The Conference also adopted a Convention (No.175) and a Recommendation (No.182) concerning Part-Time Work.[273]

The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 10 to 25 February 1994 and presented its report,[274] which was submitted to the International Labour Conference at its 81st session.

Representations were lodged under article 24 of the Constitution of the International Labour Organization[275] alleging non-observance by Guatemala of the Forced Labour Convention, 1930, (No. 29), and of the Abolition of Forced Labour Convention, 1957, (No. 105);[276] by the Czech Republic of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);[277] by Gabon of the Protection of Wages Convention, 1949 (No. 95);[278] by Nicaragua of the Protection of Convention, 1949 (No. 95), of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), and of the Employment Policy Convention, 1964 (No. 122)[279] by Paraguay of the Minimum Wage-Fixing Machinery Convention, 1952 (No. 26);[280] by Peru of the Social Security (Minimum Standards) Convention, 1952 (No. 102);[281] by Turkey of the Freedom of Association and Protection of the Right to Organize Convention, 1948

*The order of the organizations reflects the chronological order, from earlier to most recent, of the effective date the United Nations entered into a relationship with the organization. All the organizations listed here are United Nations special agencies, except the IAEA, which is an autonomous intergovernmental organization under the aegis of the United Nations and is listed last.

(No. 87);[282] by Uruguay of the Safety Provisions (Building) Convention, 1937 (No. 62), of the Labour Inspection Convention, 1947 (No. 81), of the Labour Administration Convention, 1978 (No. 150), of the Occupational Safety and Health Convention, 1981 (No. 155) and of the Occupational Health Services Convention (No.161);[283] by the Congo of the Protection of Wages Convention, 1949 (No. 95);[284] by Costa Rica of the Employment Policy Convention, 1964 (No. 122);[285] by France of the Convention on Protection of Wages, 1949 (No. 95), and on Minimum Wage Fixing, 1970 (No. 131),[286] and of the Conventions on Labour Inspection, 1947 (No. 81), and on Social Policy (Non-Metropolitan Territories), 1947 (No. 82);[287] by Poland of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).[288]

The Governing Body of the International Labour Office, which met at Geneva, considered and adopted the following reports of its Committee on Freedom of Association: the 292nd and 293rd reports[289] (259th session, March 1994), the 294th report[290] (260th session, June 1994); and the 295th and 296th reports[291] (261st session, November 1994).

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Decisions of main bodies of the Organization.

(i) The Council

a, Review of provisions for acceptance procedures under article XIV of the FAO Constitution

At its 107th Session, the Council endorsed the conclusion of the Committee on Constitutional and Legal Matters (CCLM) which had reviewed the provisions of article XIV of the FAO Constitution concerning the acceptance of agreements concluded thereunder, and concluded that a wide range possibilities was provided for in the Constitution and General Rules of the Organization, as well as in the Vienna Convention on the Law of Treaties (1969), although these had not always been fully exploited in practice. Consequently there was no need for amendments.

b, Participation of European Community and European Community Member States, representing their overseas territories outside the geographical scope of the Treaty of Rome, in FAO meetings and intergovernmental agreements under FAO auspices

The CCLM discussed the matter at its 63rd session (September 1994) and concluded that the basic issue was already well covered in the relevant provisions of the Basic Texts of the Organization, as supplemented by the Declaration of Competence lodged by EC and its member States at the time of admission to FAO. Thus, in the view of the CCLM, there could be no question of a "double voice" or "double vote".

The FAO Council, at its 107th session (November 1994), requested the CCLM to review again problems concerning agreements where exclusive competence lay with the member Organization, but member States still wished to participate on behalf of their overseas territories that were outside the geographical scope of the transfer of competence of the member organization, and to prepare new guidelines with regard to participation in agreements established under article XIV of the Constitution.

(*b*) Legislative matters

(i) Activities connected with international meetings

FAO participated in and provided contributions to the following international meetings:

— Expert Consultation on the Code of Conduct on Responsible Fishing, Cape Verde, 1994, and Rome, 26 September–5 October 1994;

— 3rd Session of the Intergovernmental Negotiating Committee for a Convention to Combat Desertification, New York, 18–30 January 1994;

— United Nations conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, 4–31 March 1994;

— International Law Association (ILA), meeting of the Water Resources Committee, Rome, 10–12 February 1994;

— Workshop on the Environmental Assessment and Management of Aquaculture Development, Bangkok, 21–26 February 1994;

— Interagency Meeting on a Legally Binding Instrument on the Mandatory Application of the Prior Informed Consent Procedure, Geneva, 6–7 March 1994;

— 2nd Meeting of the Task Force on Strengthening the Legal Basis of the Amended London Guidelines, Geneva, 8–10 March 1994;

— International Association for Water Law, Symposium on Water Law and Administration in Italy: Present State and Pointers for the Future, Rome, 15–16 March 1994;

— 4th Session of the Intergovernmental Negotiating Committee for a Convention to Combat Desertification, Geneva, 20 March–1 April 1994;

— IUCN Environmental Law Centre Meeting on the Evolution of Environmental Law over the Last 20 Years, Bonn, 27–29 April 1994;

— Intellectual Property, Rome, 14–21 May 1994;

— European Inland Fisheries Advisory Commission, 18th Session, Rome, 17–25 May 1994;

— Food Law and Quality Improvement in Central and Eastern European Countries , Warsaw, 25–29 May 1994;

— Advisory Group Meeting on the Andean Pact Decision on Access to Genetic Resources, Lima, 28 May–2 June 1994;

— IV International Conference "Towards World Governing of the Environment," Venice, 2-5 June 1994;

— 5th Session of the Intergovernmental Negotiating Committee for a Convention to Combat Desertification, Paris, 5–19 June 1994;

— 1st Meeting of the Steering Committee of the UNEP/UNDP Environment Law Project for Africa, The Hague, 9–11 June 1994;

— 2nd Session of the Intergovernmental Negotiating Committee for the Convention on Biological Diversity, Nairobi, 22 June–4 July 1994;

— Conference on Aquaculture and Water Resource Management, Stirling, Scotland, 22–26 June 1994;

— Workshop on Harmonization of Requirements and Procedures for Registration and Control of Pesticides in the Andean Subregion, Lima, 8–12 August 1994;

— Workshop on the Requirements of Plant Quarantine for the Near East, Alexandria, Egypt, 19–24 September 1994;

— Steering Committee Meeting, FAO Microbanking System, Rome, 22 September 1994;

— Second Meeting of the Steering Committee of the UNEP/UNDP Environmental Law Project for Africa, Geneva, 29 September–1 October 1994;

— Technical Meeting on the Black Sea Fisheries Convention, Istanbul, 12–17 October 1994;

— Workshop on Principles of Plant Quarantine and Pest Risk Analysis for the Near East, Cyprus, 24–28 October 1994;

— International Development Liaison Interests Course on Environmental Law in Urban Areas, La Plata, 24–28 October 1994;

— Meeting of Legal and Technical Experts to Examine Amendments to the Barcelona Convention and its Related Protocols and the Mediterranean Action Plan, Barcelona, 13–20 November 1994;

— Third Meeting of the Steering Committee of the UNEP/UNDP Environmental Law Project for Africa, Nairobi, 23–26 November 1994;

— 1st Session of the Conference of the Parties to the Convention on Biological Diversity, Nassau, 25 November–13 December 1994;

— Interagency Meeting for Consideration of the Major issues related to the Development of a Legally Binding Instrument for the Application of the Prior informed Consent Procedure, Geneva, 29–30 November 1994;

— Informal Consultative Meeting among Governments and Relevant Organizations for Consideration of the Major Issues Related to the Development of a Legally Binding Instrument for the Application of the Prior Informed Consent Procedure, Geneva, 1–2 December 1994;

— National Workshop on Cooperatives Legislation, Beijing, 4–10 December 1994;

— Meeting with the Inter-American Development Bank, Washington, 6–8 December 1994;

— Ibero-American Seminar on the Law and Technology of Water, Alicante, 15–17 December 1994;

— MicroBanker Workshop, World Council of Credit Unions, Washington, 15–16 December 1994;

— Expert Consultation on the Reorganization of Agrarian Structures in Rapidly Changing Economic Environments, Rome, 12–14 December 1994;

— EUROWATER Project (Institutional Mechanisms for Water Management in the Context of European Environmental Policies), Meeting of Experts, Paris, 19–20 December 1994.

(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 agricultural forms of production (especially in countries in transition); agricultural credit (Zambia); water (Bulgaria, Mongolia, the former Yugoslav Republic of Macedonia); plant protection (Bolivia); biodiversity (Ecuador); plant breeders' rights (Chile).

During 1994 legislative assistance and advice in the field were given to various countries on the following topics:

a. *Agrarian legislation*

Albania (joint ventures), Bolivia (agrarian law), Burundi (rural law), Central African Republic (agricultural investment), Congo (rural land law), Guinea (rural land law) Laos People's Democratic Republic (rural land law), Lithuania (land law), Mali (rural credit), Mauritania (oasis law), Mongolia (land regularization), Morocco (agricultural investment), Mozambique (land law), Togo (land law), Vietnam (cooperatives law).

b. *Water legislation*

Belize, Colombia, El Salvador, Indonesia, Lake Victoria region (Kenya, Uganda, United Republic of Tanzania, Uganda), Lithuania, Yemen.

c. *Animal health and production legislation*

Benin, Gambia, Ivory Coast, Laos People's Democratic Republic, Togo.

d. *Plant protection legislation*

Algeria, Brazil, Cameroon, Cyprus, Dominica, Egypt, Islamic Republic of Iran, Iraq, Lebanon, Libya Arab Jamahinya, Malawi, Malta, Morocco, Jordan, Oman, Saudi Arabia, Sudan, Arab Republic of Syria, Tunisia, Turkey, Uganda, United Arab Emirates, United Republic of Tanzania, Yemen, Zimbabwe.

e. *Plant production and seed legislation*

Albania (seed), Dominican Republic (seed), El Salvador (seed), Mauritania (seed), Morocco, Pakistan, United Republic of Tanzania (seed), Zanzibar (biodiversity and plant genetic resources).

f. *Pesticide legislation*

Argentina, Bolivia, Brazil, Chile, Colombia, Congo, Ecuador, Lebanon, Paraguay, Peru, Uruguay, Venezuela.

g. *Food legislation*

Albania, Burkina Faso, Côte d'Ivoire, Estonia, Gabon, Indonesia, Lithuania, Nicaragua, Poland

h. *Fisheries legislation*

Albania, Baltic States, Belize, Burkina Faso, Central African Republic, Côte d'Ivoire, El Salvador, Guinea, Islamic Republic of Iran; Lake Victoria region (Burundi, Kenya, Uganda, United Republic of Tanzania), Lesotho (inland fisheries; aquaculture), Madagascar, Malawi (inland fisheries).

i. *Forestry and wildlife legislation*

Albania (forestry), Armenia (forestry), Benin (rural institutions), Bolivia (forestry), Burkina Faso (forestry and wildlife), Cambodia (forestry), Comoros (forestry), Côte d'Ivoire (wildlife), Guinea (wildlife), Mali (forestry), Mauritania (forestry), Namibia (forestry), Tonga (forestry), United Republic of Tanzania (forestry — Zanzibar), Yemen (forestry).

j. *Environment legislation*

Burkina Faso, Cambodia, Cameroon, Cyprus, Nigeria, Uganda (biological diversity), United Republic of Tanzania (Zanzibar).

(iii) Legislation research and publications

Research was conducted, *inter alia*, on: customary water rights and practices in selected African countries; privatization of water-related services in Latin America; land law in Africa; seed and plant variety protection; plant breeders' rights legislation in developing countries in the light of the Biodiversity Convention and GATT; food control and certification legislation: public authorities and producers; legal framework for food security; pesticides registration legislation

(iv) Collection, translation and dissemination of legislative information

In 1994, FAO published the annual *Food and Agricultural Legislation* (*Recueil de legislation*, *alimentation et agriculture*; *Colección legislativa*: *agricultura y alimentación*).

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) Membership in the Organization

Vanuatu and South Africa became States members of UNESCO respectively on 10 February and 12 December 1994.

(*b*) International regulations

(i) Entry into force of instruments previously adopted

On 1 April 1994 the 1987 amendments to the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 1971) entered into force. These amendments, adopted by a Conference of the States parties in 1987 at Regina, Canada, introduced into the Convention provisions foreseeing, notably, the adoption of a budget and payment of contributions thereto by the States parties.

(ii) Preparatory work on new instruments

During 1994, preparatory work was undertaken on a possible declaration on the protection of the human genome, as well as on a possible joint UNESCO — Council of Europe convention on the recognition of qualifications in higher education in the European region.

(*c*) Human rights

Examination of cases and questions concerning the exercise of human rights coming within UNESCO's fields of competence

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters from 19 to 20 April 1994 and from 11 to 13 October 1994, in order to examine communications which had been transmitted to it in accordance with Executive Board decision 104 EX/3.3.

At its April session, the Committee examined 27 communications, of which 17 were examined with a view to determining their admissibility or otherwise and 8 were examined as regards their substance. Of the communications examined, 1 was declared irreceivable and 5 were struck from the list either because they were considered as having been settled or because they did not, upon examination of the merits, appear to warrant further action. The examination of 21 communications was suspended. The Committee presented its report to the Executive Board at its 144th session.

At its October session, the Committee had before it 27 communications, of which 14 were examined as to their admissibility and 6 were examined from the standpoint of their substance. Of the communications examined, none was declared irreceivable and 5 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 22 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 145 session.

(*d*) Copyright activities

A regional committee of experts on the Draft Programme for Teaching Copyright at the University in the States of Asia and the Pacific Region (category VI), was held in cooperation with the Principle Regional Office for Asia and the Pacific (PROAP) in Khao Yai, Thailand, from 27 November to 1 December 1994. The participants, teachers of law from the universities of several developing countries of the region, discussed the draft programme prepared by the secretariat of UNESCO and amended it to reflect the realities prevailing in the region. The amended programme and the recommendations formulated by the participants were widely circulated among the Governments of the States of the region to encourage the introduction of teaching of copyright and neighbouring rights at the university level.

A sub-regional seminar on copyright for the Southern African States (cat. VII), Mangochi, Malawi, from 10 to 14 October 1994, was held in cooperation with the Malawi National Commission for UNESCO, representatives of the secretariat (Sector of Culture), of the Southern African Development Community (SADC) and the local Society of Authors of Malawi (COSOMA). There were 74 participants.

A sub-regional seminar for the Commonwealth of Independent States (cat. VII), organized in cooperation with the National Commission of the Russian Federation for UNESCO and the Russian Society of Authors, was held in Moscow from 6 to 8 December 1994. Sixty representatives of the CIS States and various regions of the Russian Federation participated.

A national seminar on copyright and Neighbouring Rights for Teachers of law (cat. VII) was held from 30 August to 2 September 1994 in Papayan, Colombia, in cooperation with the Regional Centre for Book Promotion in Latin America and the Caribbean (CERLALC) and the Ministry of National Education of Colombia (National Directions on Copyright). Forty-four persons took part in the seminar.

A regional meeting of Latin America teachers of copyright and neighbouring rights at the university level (within the framework of UNITWIN cat. VI) was held on 19 and 20 October 1994 in Bogotá. Ten specialists took part in the meeting.

At the request of the Government of the Sudan, legal assistance was provided in the revision of the national law on copyright, introducing also the protection of the rights of performers, producers of phonograms and broadcasting organizations. UNESCO officials also met government officials and circles concerned with copyright, with a view to sensitizing them on the role of copyright in stimulating creativity and cultural development and the need for effective copyright protection.

At the request of the Government of Bolivia, legal assistance was provided in January 1994 in the elaboration of a draft decree on the legal protection of computer software.

4. WORLD HEALTH ORGANIZATION

(*a*) Constitutional and legal developments

During 1994, the following countries became members of the World Health Organization by deposit of an instrument of acceptance of the Constitution, as provided for in articles 4, 6 and 79(b) of the Constitution.[292]

Niue ..... 4 May 1994

Nauru ..... 9 May 1994

Thus, at the end of 1994, there were 189 State Members and 2 Associate Members of WHO.

The amendments to article 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, came into force on 11 July 1994.

(*b*) Health legislation

WHO's Health Legislation Programme continued its ongoing activities aimed at facilitating the international flow of information dealing with international and national health legislation. The primary vehicle for this process remains the WHO quarterly journal, the *International Digest of Health Legislation / Recueil International de Législation Sanitaire*, the total circulation of the journal being approximately 4200 copies. The *Digest* serves as the key element whereby the Organization operates a global clearing house for information in this field. The year 1994 saw the first major change in the format and presentation of the *Digest* since 1981 and feedback from readers concerning the new presentation has been positive. A CD-ROM version of the journal has been prepared and will appear in 1995, covering vols. 31 to 45; this product will substantially facilitate the retrieval of legislative, regulatory and related information.

Every effort was made to ensure continuing, systematic access to international, national and relevant subnational legislation on all aspects of health and human environment of interest to the readership. In particular, efforts were made in 1994 in assuring the regular flow of legislative information from the countries of Central and Eastern Europe and the newly independent States of the former USSR.

In the course of 1994, the Unit received an unprecedented number of requests for information on a wide variety of topics in the field of health legislation and bioethics. The total number was 271 (including 22 relating to AIDS). High priority has continued to be given to requests for information dealing with HIV/AIDS legislation and related matters.

Significant support was accorded in 1994 to the newly established Regional Programme in Bioethics of the Pan American Health Organization, located in Santiago de Chile.

In 1994, a new version of the Health Legislation Unit's listing of HIV/AIDS legislation was produced (in English and French). Other efforts were made to systematize the collection/compilation of HIV/AIDS-related documentation.

Legislation designed to combat tobacco consumption continues to be regularly monitored.

The Programme on Substance Abuse prepared a study entitled "Drug and alcohol abuse: policy, law and programmes for treatment and rehabilitation" (to be published by WHO in 1996). Information on all significant international, national and subnational developments in this area was provided in this connection. This study is a follow-up to an earlier project that culminated in a WHO publication.

Food safety legislation is a topic of considerable current interest both nationally and internationally, and working group are convened on this topic by the Food Safety Programme.

A major review of legislation dealing with traditional and alternative systems of medicine was prepared by the Traditional Medicine Programme. This is an update of an earlier study, which culminated in a well-received legislative review published in the *International Digest of Health Legislation*.

Among other initiatives a systematic compilation of legislation on leprosy was compiled, at the request of the Action Programme for Elimination of Leprosy. In fact the *Digest* is being used as a vehicle for the dissemination of information concerning outputs of various programmes, such as the Action Programme on Essential Drugs.

There has been a regular and systematic exchange of information relating to measures (including legislation) introduced to implement the International Code of Marketing of Breast-milk Substitutes.

Cooperation was ensured with the Council for International Organizations of Medical Sciences in preparing the conference it organized, with WHO support, held in Ixtapa, Mexico, in April 1994, which led to the adoption of the "Declaration of Ixtapa: A Global Agenda for Bioethics".

5. WORLD BANK

(*a*) IBRD, IFC and IDA: Membership

During 1994, Eritrea became a member of the Bank and IDA, the Republic of Moldova became a member of IDA and Tajikistan became a member of IFC.

(*b*) World Bank Inspection Panel

The World Bank's Inspection panel was established on 22 September 1993 and started operations in August 1994.[293] The Panel provides groups of private citizens direct access to the Bank if they believe they are being directly and adversely affected by the failure of the Bank to follow its own policies and procedures with respect to the design, appraisal or implementation of a project financed by the Bank or IDA.

In November 1994, the Inspection Panel registered the first request for inspection, concerning the planned Arun III hydroelectric power project in Nepal. The request for inspection alleged violations by IDA of its policies concerning, *inter alia*, environmental assessment, involuntary resettlement and indigenous people. On 23 November, the Inspection Panel received Management's response to the request for inspection.

(*c*) Multilateral Investment Guarantee Agency (MIGA)

(i) *Signatories and members*

As of December 1994, the Convention Establishing the Multilateral Investment Guarantee Agency (the Convention)[294] had been signed by 148 countries. During 1994, requirements for MIGA membership were completed by the following

countries: Bahamas, Benin, Costa Rica, Equatorial Guinea, India, Lebanon, Mozambique, Nepal, Philippines, South Africa, Ukraine, Venezuela and Viet Nam.

(ii) *Significant decisions of the Council of Governors*

On 8 February 1994, the Council of Governors adopted resolution No. 47 to increase the maximum amount of contingent liabilities that may be assumed by the Agency from 150 per cent to 350 per cent of the amount of the Agency's unimpaired subscribed capital and its reserves plus such portion of its reinsurance cover, if any, as the Board may determine (the "Agency's assets"). The increase would be accomplished in two stages: (a) a first increase to 250 per cent of the Agency's assets effective immediately; and (b) a second increase to 350 per cent of the Agency's assists to be considered by the Board of Directors on the basis of the Agency's reserve position and prudent risk management once the sum of the Agency's actual level of contingent liabilities (including contracts and commitments in force) plus those operations approved by, or concurred with, the Board of Directors has reached 240 per cent of the Agency's assets.

On 1 August 1994 the Council of Governors adopted resolution No. 48, entitled "Review of the activities of the Agency in accordance with article 67 of the MIGA Convention". Article 67 of the Convention provides that "the Council shall periodically undertake comprehensive reviews of the activities of the Agency as well as the results achieved with a view to introducing any changes required to enhance the Agency's ability to serve it objectives". Article 67 additionally provides that the first review take place five years after the entry into force of the Convention and that the dates of subsequent reviews shall be determined by the Council. In its first review, the Council expressed its satisfaction with the growth of the guarantee program of MIGA and the reorientation of its technical assistance programme. The Council further resolved that the Board of Directors undertake a study of the measures to be adopted to assure capital and reserves adequacy into the future; and that the next periodic review take place during fiscal year 2000, unless circumstances require that such review be undertaken earlier.

(iii) *Guarantee operations*

MIGA issues investment guarantees to foreign investors in its developing member countries, against the major political (i.e., non-commercial) risks of expropriation, currency inconvertibility or transfer, and war and civil disturbance. As of 31 December 1994, MIGA had issued 129 contracts of guarantee, totaling about US$ 1.3 billion in maximum contingent liability. In addition, MIGA had four commitment letters outstanding for $190 million of potential additional coverage. Aggregate foreign direct investment facilitated by these projects was more than $6.8 billion. Investors holding MIGA guarantees for the same period were from: Belgium, Canada, Denmark, France, Germany, Japan, Luxembourg, Netherlands, Norway, Saudi Arabia, Spain, Switzerland, United Kingdom and United States. Similarly, host countries of MIGA guaranteed investments during this time period included: Argentina, Bangladesh, Brazil, Bulgaria, Cameroon, Chile, China, Costa Rica, Czech Republic, El Salvador, Ghana, Guyana, Honduras, Hungary, Indonesia, Jamaica, Kazakhstan, Madagascar, Morocco, Pakistan, Peru, Philippines, Poland, Russia, Trinidad and Tobago, Turkey, Uganda, United Republic of Tanzania, and Uzbekistan.

(iv) *Host Country Investment Agreements between MIGA and Its member States*

As directed by article 23(b)(ii) of the Convention, the Agency concludes bilateral legal protection agreements with developing member countries to ensure that MIGA is afforded treatment no less favourable than that accorded by the member country concerned to an 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 1994, MIGA had concluded 64 such agreements. In 1994, the Agency concluded agreements with Côte d'Ivoire, Georgia, India, Kyrgyzstan, Madagascar, Nepal, Papua New Guinea, Philippines, Russian Federation, Senegal, South Africa, Turkmenistan and Uzbekistan.

In accordance with the directives of article 18(c) of the Convention, the Agency also negotiates agreements on the use of local currency. These agreements enable MIGA to dispose of local currency in exchange for freely usable currency, acquired by it as a result of subrogation arising from a claim pad by the Agency. As of 31 December 1994, MIGA had concluded 69 such agreements. In 1994, the Agency concluded agreements with the following countries: Côte d'Ivoire, Georgia, Honduras, India, Kyrgyzstan, Madagascar, Nepal, Papua New Guinea, Philippines, Russian Federation, Senegal, South Africa, Turkmenistan and Uzbekistan.

Article 15 of the Convention requires that before issuing a guarantee MIGA obtain the approval of the host member country in which the investment is contemplated. In order to expedite the process, MIGA negotiates arrangements with the host country Governments that provide a degree of automaticity in the approval procedure. As of 31 December 1994, MIGA had concluded 77 such agreements. In 1994, the Agency concluded agreements with the following 13 countries: Costa Rica, Côte d'Ivoire, Honduras, India, Jordan, Lebanon, Nicaragua, Nepal, Papua New Guinea, Philippines, Senegal, South Africa, Turkmenistan.

(*d*) International Centre for Settlement of Investment Disputes

(i) *Signatures and ratifications*

During 1994, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention)[295] was signed by five countries: Nicaragua, Slovenia, Spain, Saint Kitts and Nevis and Uzbekistan. Two of these — Slovenia and Spain — as well as Argentina, Slovakia and Zimbabwe, ratified the ICSID Convention in the course of the year. With these new signatures and ratifications, the number of signatory States and Contracting States reached 131 and 115 respectively.

(ii) *Disputes before the Centre*

During 1994, conciliation proceedings were instituted in one new case, *SEDITEX* v. *Government of Madagascar* (case CONC/94/1), and arbitration proceedings were instituted in two new cases, *Philippe Gruslin* v. *Government of Malaysia* (case ARB/94/1) and *Tradex Hellas S.A.* v. *Republic of Albania* (case ARB/94/2). In two cases, *Vacuum Salt Products Limited* v. *Government of the Republic of Ghana* (case ARB/92/1) and *Scimitar Exploration Limited* v. *People's Republic of Bangladesh and Bangladesh Oil, Gas and Mineral Corporation* (case ARB/92/2), the proceedings were concluded with awards declining jurisdiction over the disputes.

As of 31 December 1994, one other case was pending before the Centre: *American Manufacturing & Trading, Inc.* v. *Republic of Zaire* (Case ARB/93/1).

6. INTERNATIONAL MONETARY FUND

(*a*) Membership issues

(i) *Accession to membership*

The Fund's membership increased by one country in 1994, as Eriterea became a member of the Fund on 6 July 1994 with a quota equaling SDR 11.5 million.[296] A member's quota determines it subscription payment to the Fund, it voting power in the Fund, its maximum access to the Fund's financial resources, and its share in the allocation of special drawing rights (a reserve asset created by the Fund pursuant to article XVIII of the Fund's Articles of Agreement) if and when made. A member's quota is calculated on the basis of certain formulas that take into account such economic factors as a member's gross domestic product, current account transactions, the variability of current receipts, and official reserves. With the accession of Eriteria, the total number of Fund's membership, as of 31 December 1994, has increased to 179 countries.

(ii) *Status under article VIII or article XIV*

Under article XIV, section 2, of the Fund's Articles of Agreement, a member may elect, when joining the Fund, to avail itself of the transitional arrangements and, thus, may maintain restrictions on the making of payments and transfers for current international transactions that were in existence at the time it becomes a Fund member. Article XIV does not, however, permit a member to introduce new restrictions on the making of payments and transfers for current international transactions. Members of the Fund accepting the obligations of article VIII, sections 2, 3, and 4 undertake, among other things, to refrain from imposing any restrictions on the making of payments and transfers for current international transactions or engaging in multiple currency practices without the Fund's approval. During 1994, the following 15 member countries that have accepted these obligations (as of 31 December 1994) to 98 members: Bangladesh, Estonia, Ghana, Grenada, India, Kenya, Latvia, Lithuania, Malta, Nepal, Pakistan, Paraguay, Sri Lanka, Uganda, and Western Samoa.

(iii) *Suspension of voting rights — Sudan and Zaire*

a. *Zaire*

In the second application of article XXVI, section 2(b) of the Fund's Articles following its revision under the Third Amendment of the Article of Agreement[297], which authorizes the Fund to take certain remedial actions against members that persist in their failure to fulfill any of the obligations under the articles, the Executive Board decided to suspend the voting and certain related rights of Zaire, effect 2 June 1994. The amended article XXVI, section 2(b), was first applied in 1993 against the Sudan when the Executive Board adopted the decision to suspend the Sudan's voting and other related rights.

The Executive Board reviewed the decision to suspend Zaire's voting rights on 16 December 1994 and decided that, unless Zaire resumes active cooperation with the Fund in the areas of policy implementation and payments performance, it would consider initiating the procedure for compulsory withdrawal at its next review scheduled to take place within six months.

b. *Sudan*

The procedure for compulsory withdrawal of the Sudan was initiated on 8 April 1994, pursuant to article XXVI, section 2(c), by the issuance of a complaint by the Managing Director of the International Monetary Fund. The complaint was considered by the Executive Board on 29 July 1994 and again on 16 September 1994. Since the issuance of the complaint, however, the Sudan has made a number of payments to the Fun and has agreed to a schedule of payments that would reduce the level of its arrears. As a result, although the Managing Director's complaint remained in effect as of end-December 1994, no further action was taken against the Sudan.

(*b*) Representation of member countries

Special circumstances in 1994 involving Haiti, Liberia, Rwanda, Somalia, the Sudan, and Zaire raised issues concerning their participation at the 1994 annual meetings. There were also issues relating to representation of countries whose membership applications were pending or at issue and attendance of observers to the annual meetings. These issues are briefly summarized below:

- *Haiti*: The Fund continued to accept the credentials of the Governor and Alternate Governor designated by the Government in exile of President Jean-Bertrand Aristide;
- *Liberia*: With the completion on 26 August 1994 of a review by the Fund's Executive Board of Liberia's overdue financial obligations to the Fund, the first since 1990, operational relations were reestablished between the Fund and Liberia, and the Governor and the Alternate Governor appointed by the Liberian authorities attended the annual meetings;
- *Rwanda*: Attendance of the Governors and Alternate Governors for Rwanda initially became an issue when in mid-1994 the Government of the assassinated President Habyarimana was ousted by the Rwandese Patriotic Front. The duly appointed delegates from Rwanda retained their positions and attended the annual meetings:
- *Somalia*: Because of the severity of the hostilities and belligerency confronted in Somalia, the Fund determined that there was no effective government in Somalia. Accordingly, it was decided that no delegation from that country should be authorized to attend the 1994 annual meetings;
- *Sudan*: Following the Fund's decision to suspend the Sudan's voting rights under article XXVI, section 2(b), the Governor and Alternate Governor appointed by Sudan had ceased to hold office in accordance with Schedule L of the Fund's Articles of Agreement. In this circumstance, the Sudan's attendance to the 1994 Annual Meetings would have been possible only if a request made by, or a matter particularly affecting, Sudan was under consideration at the Meetings. As this condition was not present, there was no basis for Sudan to participate in the 1994 annual Meetings;

• *Zaire*: As was the case with Sudan, because Zaire's voting and other related rights were suspended with effect from 2 June 1994, representatives of Zaire were barred from participating in the 1994 annual meetings.

• *New and Successor Members*:

— *Andorra and Brunei Darussalam*: Andorra and Brunei Darussalam had expressed their interest in applying for membership in the Fund. Accordingly, on that basis, the two countries were invited to attend the annual meetings as special guests;

— *Former Socialist Federal Republic of Yugoslavia*: In December 1992 the Fund decided that the Socialist Federal Republic of Yugoslavia had ceased to exist as a member and established a mechanism under which, when certain conditions were met, each of the five successor republics of the Socialist Federal Republic of Yugoslavia could succeed to the membership of the Socialist Federal Republic of Yugoslavia. The five successor republics of the former Socialist Federal Republic of Yugoslavia are: Federal Republic of Yugoslavia (Serbia and Montenegro), Republic of Bosnia and Herzegovina, Republic of Croatia, Republic of Slovenia, and the former Yugoslav Republic of Macedonia. In accordance with these decisions, the Republic of Croatia, the Republic of Slovenia, and the former Yugoslav Republic of Macedonia became members of the Fund in 1993. As of the 1994 annual meetings, the Republic of Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro) had not become members of the Fund. On the recommendation of Executive Board, representatives of the Republic of Bosnia and Herzegovina were invited to attend the 1994 annual meetings as observers.

• *Attendance of observers*: Section 5(b) of the Fund's By-laws provides that the Chairman of the Board of Governors, in consultation with the Executive Board, may invite observers to attend any meeting of the Board of Governors. Pursuant to that provision, the Fund has traditionally invited other international and regional organizations to attend the Annual Meetings as observers. In August 1994, on the recommendation of the Executive Board, the Board of Governors decided to cease applying a 1980 resolution designed to prevent the participation of the Palestine Liberalization Organization (PLO) as an observer at the Annual Meetings. The Chairman of the Board of Governors had decided in the same year that no observers would be invited unless the attendance of the PLO was made possible. This policy was followed (except for Switzerland) for successive annual meetings. Following the August 1994 decision, however, invitations were extended to the entities that had been invited to the 1979 meetings and to certain additional entities, including the PLO.

(*c*) Fund facilities

(i) *Compensatory and Contingency Financing Facility (CCFF)*

On 24 June, 1994, the Executive Board adopted a decision that extends the period within which a member may obtain financial assistance from the Fund under the cereal imports component of the Compensatory and Contingency Financing

Facility (CCFF) from 30 June 1994 to 13 January 1996. CCFF is a policy of the Fund on the use of its resources in the General Resources Account adopted pursuant to article V, section 3 of the Articles. It is intended to provide financial assistance to member countries that are experiencing balance of payments difficulties arising out of: (i) temporary export shortfalls, (ii) adverse external contingencies, (iii) excess cost of cereal imports, or (iv) excess cost of oil imports. (Financial assistance under the element of CCFF relating to financing for excess in oil import cost expired at the end of 1991). The purpose of extending this component of CCFF was to enable the Executive Board to take into account the Fund's experience with all of CCFF components at the time of its review of the CCFF decision.

(ii) *Enhanced Structural Adjustment Facility (ESAF)*

On 23 February 1994, the Executive Board determined that conditions had been met to put into effect decisions on the continuation of the Enhanced Structural Adjustment Facility (a policy by which the Fund provides financial assistance on highly concessional terms to low-income countries undertaking macroeconomic adjustment and structural reform policies) and the enlargement of the overall resources of the ESAF Trust. These decisions were approved in December 1993, as were the necessary amendments and other proposed changes to the provisions of the Instrument to Establish the ESAF Trust, and were conditioned on, among other things, the Executive Board determination that sufficient contributions to the Loan and Subsidy Accounts of the ESAF Trust were committed or in firm prospect to initiate operations under the enlarged and amended ESAF Trust.

(iii) *Systemic Transformation Facility (STF)*

During the course of 1994, the Fund made two important amendments to the provisions of the decision establishing the Systemic Transformation Facility (STF), which is a temporary facility established in April 1993 to provide financial assistance to the members with economies in transition that face balance of payments difficulties arising from severe disruptions to their trade and payments arrangements owing to a shift from reliance on trading at nonmarket prices to multilateral, market-based trade. First, the interval between the first purchase and the second purchase under the STF was extended from twelve months to eighteen months (financing under the STF decision is to be furnished in two tranches). Second, the period within which an eligible member may make the first purchase under the STF was extended from 31 December 1994 to 30 April 1995. An eligible member's maximum access to the Fund's resources under the STF decision continues to be limited to 50 per cent of quota.

(iv) *Increase in Annual Access Limit under Stand-By Arrangement and Extended Arrangement*

The Executive Board decision that provides guidelines on access limits to the Fund's general resources under the credit tranche policies and the Extended Fund Facility[298] was amended on 24 October 1994 to increase the annual access limit from 68 per cent of quota to 100 per cent of quota. The cumulative access limit (net of scheduled repurchases) to the Fund's general resources under a stand-by arrangement or an extended arrangement remains unchanged at 300 per cent of quota. Under exceptional circumstances, however, the amount of resources committed under a stand-by arrangement or an extended arrangement may exceed these limits. The purpose of increasing the annual access limit was to provide confidence to members with poten-

tially large financing needs, including those members with economies in transition, that the Fund is prepared, while preserving its catalytic role, to support their economic and financial programs in a timely manner and on an appropriate scale.

(v) *Policy Developments*

a. Proposal to Establish Policies on Currency Stabilization Funds

The Executive Board met in December 1994 to begin consideration of the possibility of the Fund's involvement in financing of currency stabilization funds, which could, in certain circumstances, assist countries adopting a nominal exchange rate anchor in the context of a strong stabilization program. It was envisaged for discussion purposes that the resources of a currency stabilization fund would be made available for use by members to engage in short-term interventions in the foreign exchange market to counter short-term exchange market pressures. While many Executive Directors expressed general interest and support for the proposal, a number of Executive Directors pointed out that the existing Fund policies were adequate in providing the necessary support for the members' exchange rate policies. It was decided that the Executive Directors would take up this matter again at a later time.

b. Proposal to Establish Short-Term Financing Facility

Recognizing the concerns about the high degree of volatility of capital flows and exchange rates, the Executive Board met in November 1994 to consider the Fund's role in providing prompt financial support through the establishment of the short-term financing facility to member countries that might experience very short-term balance of payments or exchange market pressures. Although Executive Directors were in agreement of the need to continue their efforts in improving the Fund's capacity to assist member facing sudden market disturbances, they expressed differing views on the issue of creating a new facility in the Fund for this purpose and agreed to defer deciding on the establishment of a possible short-term financing facility in the Fund.

(*d*) Debt and debt-service reduction operations—amendment

The Fund provides support for debt reduction operations of member countries on a case-by-case basis. In order to facilitate commercial bank restructuring for some countries with difficult debt situations, the Executive Board agreed on 7 January 1994 to modify its May 1989 guidelines on the Fund's support for debt reduction operations. The guidelines provide that the financing of such operations is to be linked to medium-term adjustment programs of the member country concerned and adopted in the context of stand-by or extended arrangements. Additionally, such financing would be derived by setting aside part of the member's access under a stand-by or an extended arrangement and, in appropriate cases, by augmenting the amount of resources made available to the member concerned under the arrangement approved for that member. Under the original guidelines, the amount that is set aside from purchases made under an arrangement was to be used by the member exclusively to support operations involving principal reduction, such as debt buyback or discount exchanges. The additional resources provided to members through

augmentation of access amounts under an arrangement were to be used for interest support in connection with debt and debt-service reduction operations or for collateralization of principal in reduced par bond exchanges. Under the modified guidelines, this segmentation was eliminated and both set-asides and additional resources from augmentation may be used to support operations involving "debt reduction, interest support for debt and debt-service reduction, and principal collateral for reduced-interest par bonds."[299] As a result of the elimination of the segmentation requirement in the guidelines, a number of consequential amendments were also made to the Executive Board decision on early repurchase expectations,[300] which specifies the circumstances under which a member that has availed itself of the Fund's support for debt reduction operations can be expected to make an early repurchase of the set-aside amounts and additional resources.

(*e*) Review of quotas

(i) *General Review of Quotas*

a. *Ninth General Review of Quotas*

Article III, section 2(a), of the Fund's Articles of Agreement requires the Board of Governors to conduct a general review of quotas at intervals of not more than five years. The Ninth General Review of Quotas was completed with the adoption of a resolution by the Board of Governors (effective 28 June 1990) authorizing a 50 per cent increase in the total Fund quotas.[301] Under that resolution, the increase in a member's quota was made contingent on that member (i) providing a notice to the Fund of its consent to the increase by 31 December 1991 and (ii) fully paying the increase in quota in full within 30 days after the later of (a) the date on which it notifies the Fund of its consent, or (b) the date on which the duly authorized notice was given to the Fund. As had been done in 1991 through 1993, the deadlines for consent and payment periods for the quota increase pursuant to the Ninth Quota Review were further extended in 1994. Initially, the consent period was extended to 30 December 1994 and the payment period to 779 days after the later of (a) the date on which it notifies the Fund of its consent or (b) 11 November 1992. Effective as of 23 December 1994, the Board further extended the consent period to 30 June 1995 and the payment period to 961 days after the later of (a) the date on which it notifies the Fund of its consent or (b) 11 November 1992. The deadlines were extended to account for certain countries whose application for membership was pending and for certain countries that were members on 30 May 1990, but were in arrears to the Fund's General Resources Account and were thus prevented from consenting to, and paying for, the increase in quota.

Following its clearance of arrears to the Fund, Sierra Leone consented to the quota increases determined under the Ninth General Review of Quotas. In authorizing the increase of the quotas, the Board of Governors, acting on the recommendation of the Executive Board, had decided not to permit members with overdue financial obligations to the Fund to give effect to the quota increase while they remained in arrears to the Fund. Accordingly, while Sierra Leone was in arrears to the Fund, it was barred from giving consent to, and paying for, the quota increase.

b. *Tenth General Review of Quotas*

In March and December 1994, the Committee of the Whole for the Tenth General Review of Quotas met to consider quota calculations using updated data through 1990 and a staff paper on the working of the quota formulas. On the basis of the report submitted by the Committee, the Executive Board concluded in December 1994 that the overall size of the Fund quotas was for the time being sufficient to enable Fund to promote its purposes and fulfill effectively its central role in the international monetary system. Accordingly, the Executive Board recommended that the Tenth General Review of Quotas be concluded without an increase in quotas. The next general quota review is to be concluded by March 1998.

(ii) *Special Review of Quotas*

In concluding the Ninth General Review of Quotas with the proposal to provide for a general increase in quotas, the Board of Governors had not proposed an increase in quota for Cambodia because it had not participated in the quota review. Subsequently, Cambodia requested, and was granted (in March 1994), an ad hoc increase in its quota, following settlement of its arrears and normalization of its relations with the Fund. As a result, Cambodia's quota was increased from SDR 25 million to SDR 65 million.

(*f*) Joint Vienna Institute

The Joint Vienna Institute (JVI) which began operations in September 1992 as a cooperative venture of the Fund and four other international organizations (Bank for International Settlements, European Bank for Reconstruction and Development, International Bank for Reconstruction and Development and Organization for Economic Cooperation and Development) to train officials and private sector managers from former centrally planned economies was established as an international organization on 19 August 1994 when its charter, the Agreement for the Establishment of the Joint Vienna Institute, came into effect.[302] Under the Agreement, the structure of JVI consists of an Executive Board, an Advisory Committee, a Director and staff. The first Executive Board meeting of JVI was held on 26 and 27 September 1994.

(*g*) Openness

In response to public demand for greater openness and access to information not readily available elsewhere, the Fund decided in July 1994 to publish the reports on recent economic developments of member countries, including the statistical annexes and appendices relating thereto, prepared by the Fund's staff, provided that the member country concerned does not object to its publication. These reports serve as background information for the Fund's consultation with member countries carried out pursuant to article IV of the Fund's Articles of Agreement.

7. INTERNATIONAL CIVIL AVIATION ORGANIZATION

(*a*) Legal meetings

The 29th session of the Legal Committee was held at Montreal from 4 to 15 July 1994. The main item on the agenda of the Committee was the subject: "Consideration, with regard to global navigation satellite systems (GNSS), of the establishment of a legal framework". The Legal Committee approved a draft agreement for the immediate future between the International Civil Aviation Organization and the provider(s) of the GNSS signal regarding the provision of signals for GNSS services and a checklist of items to be considered in contracts for GNSS signal provision with signal providers in the context of long-term GNSS. The Committee furthermore recommended to the ICAO Council to set up a panel of legal and technical experts for the elaboration of an internationally acceptable legal framework for the long-term implementation of GNSS. The Committee also reviewed its general work programme. A regional legal seminar on air law attended by 49 participants from 12 States and one international organization from the Middle East region was held at Beirut from 19 to 21 April 1994 to discuss major issues and challenges in the legal field.

(*b*) Work programme of the Legal Committee

The 29th session of the Legal Committee, after reviewing its General Work Programme, decided to retain its work programme as indicated below with the subjects appearing in their order of priority:

(i) Consideration, with regard to global navigation satellite systems (GNSS), of the establishment of a legal framework;

(ii) Action to expedite ratification of Montreal Protocols[303] Nos. 3 and 4 of the "Warsaw System";

(iii) Study of the instruments of the "Warsaw System";

(iv) Liability rules which might be applicable to air traffic services providers as well as to other potentially liable parties — liability of air traffic control agencies; and

(v) United Nations Convention on the Law of the Sea — implications, if any, for the application of the Chicago Convention;[305] annexes and other international air law instruments.

At its 143rd session in October, the Council, after noting the report of the Legal Committee, deferred action on the General Work Programme of the Legal Committee and requested the Secretary-General to document the recommendation of the Legal Committee to set up a panel of legal and technical experts for the elaboration of an internationally acceptable legal framework for the long-term implementation of GNSS.

8. INTERNATIONAL TELECOMMUNICATION UNION

(*a*) Constitutional matters

On 1 July 1994, a new Constitution and Convention of the ITU[306] entered into force between the parties that had deposited their instrument of ratification, acceptance, approval or accession by that date. These new instruments were adopted, in December 1992, by the Union's Additional Plenipotentiary Conference (APP) held at Geneva, the seat of the Union. They are intended to maintain the pre-eminence of the Union in the world of telecommunications by adapting its organizational and functional structure to the challenges and changes taking place in the global telecommunication environment.

The new Constitution and Convention of ITU are intended to represent a significant departure in the legal framework and practice of the Union. Since its origin in 1865, as the first intergovernmental organization, ITU has periodically adopted a new constituent or basic instrument in the form of a Convention at each succeeding Plenipotentiary Conference. In 1992, however, the Union adopted a more-or-less permanent set of constituent instruments for the future, and this new policy greatly influenced the contents and structure of the new Constitution and Convention signed at Geneva. For the first time in its history, ITU adopted a Constitution, the provisions of which are complemented by those of the new Convention. It is further intended that matters that require more frequent revision should be relegated to the Convention or other ancillary instruments. Accordingly, at the 1994 Plenipotentiary Conference that was held in Kyoto, Japan, only a few small amendments to the 1992 Constitution and Convention were approved, and it was agreed to consider whether provisions dealing with more procedural aspects of the Union's activities could be removed from the 1992 Convention and placed in a separate instrument.

It is also noteworthy that, pursuant to resolution 1, adopted by the 1992 APP, entitled "Provisional application of certain parts of the Constitution and the Convention of the International Telecommunication Union", the member States decided that certain provisions of the 1992 instruments should enter into effect as early as 1993. Under the terms of that resolution, the new structure and working methods of the Union were to be applied provisionally as from 1 March 1993. Further, the 1992 Constitution and Convention added two new elements to the structure of ITU: a Telecommunication Development Bureau (BDT), headed by an elected official, and a Radio Regulations Board (RRB), consisting of nine members (working on a part-time basis unlike its predecessor, which was a full-time body). Resolution 1 also provided that the new Director of BDT should take office no later than 1 February 1993 and that the members of the then existing International Frequency Registration Board should discharge the duties of RRB until the taking of office of the members of the RRB to be elected at the 1994 Plenipotentiary Conference of the Union.

In creating a dual-track system of implementation for the new instruments, the decisions of the 1992 APP set forth a rather unique and innovative approach to the provisional application of treaties under international law. This procedure was designed to meet the practical needs of the union as well as to shorten the period for the institution of needed organizational changes.

The 1992 Constitution and Convention also introduced significant changes to the structure and functioning of ITU. The Plenipotentiary Conference remains the supreme organ of the Union and is now scheduled to meet on a regular basis, every four years. In addition to the quadrennial Conference, ITU comprises the Council, which acts on behalf of the Plenipotentiary and meets annually, world conferences on international telecommunications, a Radiocommunication Sector (including world and regional radiocommunication conferences, radiocommunication assemblies, a Radio Regulations Board, a number of technical Study Groups and the Radiocommunication Bureau), a Telecommunication Standardization Sector (including world telecommunications standardized conferences, a Telecommunication Standardization Bureau and also a number of technical Study Groups), a Telecommunications Development Sector (including world and regional telecommunication development conferences, a Development Bureau and Study Groups) and a General Secretariat. These bodies replaced the existing structures of the Union and, in some cases, new entities were created.

The 1992 instruments also continued the developing recognition of the role of non-governmental entities and organizations, including the private sector, in the work of the ITU. The Union remains an intergovernmental organization composed of Member States. In distinction to governments, who are designated as Members of the Union, however, private companies are referred to in the applicable provisions of the instruments as "m"embers and may participate directly in the work of the Sectors of the ITU.

(*b*) Membership of ITU

During 1994, the following two States became members of the ITU: Kyrgyzstan, Tajikistan. They had been preceded in 1993 by nine new Member States: Czech Republic, Georgia, Slovakia, Kazakhstan, Micronesia, Federated States of, the former Yugoslav Republic of Macedonia, Turkmenistan, Eritrea and Andorra. As of 31 December 1994, there were 184 members of the Union.

In 1994, 24 member States ratified and 29 acceded to the 1992 Constitution and Convention adopted at Geneva. As of the end of the year, 62 members had either ratified or acceded to those instruments.

(*c*) Legislative matters

(i) *Plenipotentiary Conference (PP-94)*

At the invitation of the government of Japan, the Plenipotentiary Conference of the union was held at Kyoto from 19 September to 14 October 1994.

The Conference was attended by 1,083 delegates from 151 of the 184 ITU member countries, as well as by observers from the United Nations, Asia-Pacific Telecommunity (APT), European Conference of Postal and Telecommunications Administrations (CEPT), Inter-American Telecommunications Conference (CITEL), Caribbean Telecommunications Union (CTU), League of Arab States (LAS), Pan-African Telecommunications Union (PATU), Arab Satellite Communications Organization (ARABSAT), European Space Agency (ESA), European Telecommunications Satellite Organization (EUTELSAT), International Mobile Satellite Organization (INMARSAT) International Telecommunications Satellite Organization

(INTELSAT) and Palestine. In accordance with article 8 of the 1992 Constitution, the agenda of the Conference included determining the general polices for fulfilling the purposes of ITU, adopting decisions on strategic policy and planning, establishing the basis for the budget, electing member States to serve on the Council, electing the officers of the Union and the members of the Radio Regulations Board, and considering and adopting amendments to the instruments of the Union. In pursuance of its mandate, the Conference also approved numerous resolutions and recommendations pertaining to telecommunications matters.

(ii) *The Council*

The annual session of the ITU Council was held at ITU headquarters in May 1994. The session was attended by representatives of 42 members of ITU. Among the major actions by the Council was the adoption of resolution 1055, which provided for the immediate restoration of the full rights of the Government of South Africa to participate in the conferences, meetings and activities of the Union. That action by the Council was affirmed by resolution 12 of the Kyoto Plenipotentiary Conference, thereby formally abrogating resolution 12 of the Nice Conference (1989), which had precluded such participation and which was a continuation of resolution 14 adopted by the Nairobi Conference (1982).

(iii) *World Telecommunication Development Conference (WTDC-94)*

In April 1994, the World Telecommunication Development Conference was held at Buenos Aires. That Conference adopted a final report, which included the Buenos Aires Declaration, the Buenos Aires Action Plan, resolutions and recommendations. The final report of the Conference was published in July 1994.

(*d*) Legal assistance and advice

The Legal Service, which became the Legal Affairs Unit (JUR) on 1 January 1992, first within the External Relations Department and then in the Office of the Secretary-General, has continued to perform activities which have remained, in substance, similar to past years. The Legal Affairs Unit carried out studies and provided legal opinions on a broad range of documents in order to enable the Secretary-General to exercise fully his functions as legal representative of the Union in its relations with the Governments of States members of the Union, other international organizations and the host country. The Legal Affairs Unit has also exercised the legal functions entrusted to the Secretary-General in his role as depositary for international treaties and agreements. It was closely involved in the discussions conducted with the government of France on the sensitive issue of taxation of international civil servants and with Switzerland regarding the implications for ITU of the introduction of a value-added tax (VAT) in the host country.

In particular, the Unit conducted studies and provided legal opinions in respect of all types of documents and in a wide variety of areas, including general public international law, telecommunications law, treaty law, matters related to personnel, finance, development, privileges and immunities, the purchase and rental of equipment and services, the extension of existing buildings, and copyright and intellectual property. It has also participated actively in drafting revisions to the Staff Regulations and Staff Rules and of the Financial Regulations of the Union. In addition, the Legal Affairs Unit has been very active in preparing the numerous contracts and agreements reached

within the framework of the Union pursuant to the holding of regional and world telecommunication exhibitions. Finally, the Unit participated in the work of many conferences and meetings of the Union, including those mentioned above.

9. INTERNATIONAL MARITIME ORGANIZATION

(*a*) Membership of the Organization

During 1994 the following countries became members of the International Maritime Organization: Kazakhstan (11 March 1994), Namibia (27 October 1994) and Ukraine (28 March 1994). As at 31 December 1994, the number of members of IMO was therefore 150. There are also two associate members.

The reports of the two sessions of the Legal Committee held during 1994 are contained in documents LEG 70/10 and LEG 71/13 respectively.

(i) *Liability for damage caused by hazardous and noxious substances*

During 1994, the Legal Committee continued its consideration of a draft international convention on liability and compensation for damage in connection with the carriage of hazardous and noxious goods by sea (HNS Convention), as a priority subject. The Working Group of Technical Experts met at the March 1994 session of the Legal Committee to provide advice to the Committee on technical matters.

The Committee unanimously confirmed its previous preliminary decision that the prospective HNS Convention should consist of a two-tier system, providing for strict liability of the shipowner, supplemented by a second tier financed by cargo interests and that the shipowner's liability should covered by compulsory insurance.

With regard to the main elements of the second tier, the Committee based its consideration on the assumption that the obligation to pay contributions should be imposed on the importer/receiver. The Committee was almost unanimous in its support for a system based on post-event contributions to the second tier, although it agreed that in some cases the possibility of pre-event contributions should not be eliminated. It was established that the second tier should consist of a general account and a limited number of separate accounts. The general account would include two sectors, the first with contributions in respect of gaseous, liquid and solid chemicals, the second from large volume and low hazard substances. It was agreed that two separate accounts, oil and liquified natural gas (LNG), should be named in the draft and that liquified petroleum gas (LPG) should be inserted within square brackets. The naming of other special accounts should be considered as an option left to the diplomatic conference. The issues of whether there would have to be appropriate entry into force conditions to guarantee the viability of the accounts as well as the procedure for establishing new accounts and suspension of existing accounts were addressed by the Committee.

The issue of whether the accidental discharge of wastes in transit to a dumping site should be included within the scope of the HNS Convention was addressed by the Committee. It was agreed that the list of substances under the definition of HNS be amended to include the carriage of all wastes covered by the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1971,[307] as amended.

Other outstanding issues were considered. The Committee agreed to include within square brackets a proposal regarding the collection of levies in respect of domestic voyages within the scope of the convention concluding however that a final decision on the minimum tonnage for small ships as well as the limitation amount would have to be adopted at the diplomatic conference. The Committee also decided that informal consultations should continue with a view to reaching decisions regarding the degree of exclusion of radioactive substances and the linkage with other limitation regimes.

The Committee instructed the IMO Secretariat to prepare a new draft HNS Convention for its consideration and approval at the next session and for submission for the consideration of a diplomatic conference early in 1996. The Committee agreed to conclude work on the draft HNS Convention at the spring session of 1995.

(ii) *Consideration of possible revision of the Convention on Limitation of Liability for Maritime Claims, 1976*[308]

The Legal Committee continued with the consideration of a draft protocol to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC). The Committee confirmed its view that the scope of revision should extend only to the limits and procedures for amendments and agreed that the conclusion of the work on this agenda item should coincide with the conclusion of the work on the HNS Convention.

The Committee addressed the issue of updating the limits of compensation for passenger claims to correspond to the Protocol of 1990[309] to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.[310] There was overwhelming support to remove the overall ceiling per incident in respect of passenger claims for death and personal injury, which would have the effect that individual passenger claims would only be limited in accordance with the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and corresponding regimes. However, in view of the reservations by some delegations, no decision was reached on this point.

The Committee also considered the question of the linkage between the LLMC Protocol and the HNS Convention and the erosion of the special drawing rights (SDR) and its impact upon the value of the limits of compensation in real terms. In the light of the recent ferry tragedy in the Baltic, it was suggested that the introduction of compulsory insurance should be considered to ensure that sufficient compensation would be available. However it was noted that this matter, which would require careful consideration as well as consultation with the insurance policy, was raised too late to be dealt with in the ongoing revision of the Convention. The Committee therefore decided that the subject should be included in the work programme of the Committee for the 1996-1997 biennium and would be a priority subject in 1995.

(iii) *Work methods and organization of work*

The Committee agreed to adopt Draft Guidelines on Work Methods and Organization of Work of the Legal Committee submitted by the Chairman, on the understanding that the matter would be reviewed at the autumn session in 1995.

(iv) *Technical Cooperation subprogramme for maritime legislation*

The Legal Committee took note of the inclusion of the Subprogramme for Maritime Legislation in the Integrated Technical Cooperation Programme which was adopted by the Technical Cooperation Committee at its thirty-seventh session on 19 November 1992. The Committee further noted the information and progress report on the implementation of the subprogramme from January to June 1994.

(v) *Consideration of the application of the 1969 Civil Liability Convention[311] in cases of bareboat charter*

The Legal Committee took note of the study on bareboat charter registration prepared by the Comité Maritime International (CMI) at the request of the Legal Committee. It was recognized that, although the information provided showed no uniformity in the actual practice in those States which allow bareboat charter registration, no problems had arisen and no specific action was therefore requested of the Committee.

(vi) *Legal issues regarding the application of uniform regional standards to fishing vessels entitled to fly the flag of States not bound by these standards under the 1993 Torremolinos Protocol[312]*

On the invitation by the IMO Council to examine with high priority the issues raised in connection with the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.[313] The Committee continued its consideration of the issues raised on the basis of the information provided by the Secretariat, the comments of the United Nations Division for Ocean Affairs and the Law of the Sea, and a submission by one Member Government. In response to the question whether uniform regional standards could be applied to fishing vessels entitled to fly the flag of States not party to such regional arrangements and operating in the region concerned, the Committee concluded that the following advice be communicated to the Council:

— For present purposes, "operating" is interpreted to mean vessels engaged in fishing;

— A vessel operating in internal waters and the territorial sea is under the complete control of the coastal State;

— In respect of a vessel operating in the exclusive economic zone, there was a difference of opinion as to the legal basis for the imposition of regional safety standards. Some thought that article 62 of UNCLOS was a sufficient basis, while others though that this could only be done on the basis of bilateral or multilateral agreements binding on the flag State;

— In respect of vessels operating on the high seas there is exclusive flag State jurisdiction, and regional standards can be imposed only on the basis of bilateral or multilateral agreements binding on the flag State.

(vii) *Wreck removal and related issues*

The Legal Committee recalled its decision to maintain the subject of wreck removal and related issues in its work programme on the understanding, however, that it would not be dealt with until work on the priority items had been concluded. In relation to a submission by one delegation regarding the inclusion of liability provisions in a new convention on wreck removal and related issues, the Committee

noted that provisions on liability matters are included in the draft convention on wreck removal and related issues which is under preparation. The Committee decided that the subject of wreck removal and related issues should be included in the work programme of the Committee for the 1996-1997 biennium.

(*b*) Amendments to Treaties

The following amendments were adopted by the tacit amendment procedure with the dates for deemed acceptance and entry into force indicated in the columns below.

(i) *1994 Amendments to the International Convention for the Safety of Life at Sea, 1974, as amended; (new chapters IX, X, XI)*

A Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 was convened from 17 to 24 May 1994 to consider and adopt amendments to article VIII (an accelerated amendment procedure) and the annex to the 1974 SOLAS Convention.

The Conference did not accept the draft amendment to article VIII, which introduced an accelerated amendments procedure. It noted, however, that any Conference under the current provisions on the so-called tacit amendment procedure could reduce the period between adoption of an amendment and its entry into force and resolved that such a decision could be taken in exceptional circumstances, if determined by a three-quarter majority of Contracting Governments present and voting.

The Conference adopted the following new chapters to be added to the annex to the SOLAS Convention:

— Chapter IX on management for the safe operation of ships;

— Chapter X on safety measures for high speed craft;

— Chapter XI on special measures to enhance maritime safety (i.e. the provision of a legal basis for port State control of operation requirements).

It also agreed certain amendments to appendix 1 dealing with forms of certificates.

	Deemed acceptance	*Entry into force*
New Chapter IX	1 January 1998	1 July 1998
New Chapter X, XI and other amendments	1 July 1995	1 January 1996

(ii) *1994 Amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (chapters V, II-2, IGC Code and chapters VI, VII)*

a. The Maritime Safety Committee at its sixty-third session (May 1994) adopted by resolution MSC.31(63) amendments to chapter V of the Convention relating to ship reporting systems and emergency towing, set out in annex 1 to the resolution; and amendments to chapter II-2 of the Convention relating to arrangements for flammable oils, set out in annex 2 to the resolution.

b. At the same session the Maritime Safety Committee also adopted by resolution MSC.32(63) amendments to the International Code for the Construction and Equipment of Ships Carrying Liquified Gases in Bulk (IGC Code).

c. The Maritime Safety Committee at its sixty-fourth session (December 1994) adopted by resolution MSC.42(64) amendments to chapters VI of the above-mentioned Convention relating to Cargo Information, stowage and securing and VII relating to documents and stowage requirements.

	Deemed acceptance	*Entry into force*
Resolution MSC.31(63) annex 1 amendments	1 July 1995	1 January 1996
Resolution MSC.31 (63) annex 2 amendments	1 January 1998	1 July 1998
Resolution MSC.31(63)	1 January 1998	1 July 1998
Resolution MSC.42 (64)	1 January 1996	1 July 1996

(iii) *1994 Amendments to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto*

A Conference of Parties to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, adopted on 2 November 1994 amendments to annexes I, II, III and V of MARPOL 73/78, relating to port State control on operational requirements.

Deemed acceptance	*Entry into force*
3 September 1995	3 March 1996

(iv) *1994 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended*

The Maritime Safety Committee at its sixty-third session (May 1994) adopted by resolution MSC.33(63), amendments to chapter V of the Convention relating to special training requirements for personnel on tankers.

Deemed acceptance	*Entry into force*
1 July 1995	1 January 1996

(v) *1994 Amendments to the Convention on the International Maritime Satellite Organization (INMARSAT); as amended*

On 9 December 1994, the assembly of INMARSAT adopted amendments to the Convention relating to changing the title and text of the Convention by replacing "International Maritime Satellite Organization (INMARSAT) with "International Mobile Satellite Organization (INMARSAT)", and "INMARSAT" with "Inmarsat", respectively, and relating to the Council composition.

The amendments to the Convention will enter into force 120 days after their acceptance by two thirds of the States Parties to the Convention at the time of the adoption of the amendments, and representing at least two thirds of the total investment shares.

(vi) *1994 Amendments to the Operating Agreement on the International Maritime Satellite Organization (INMARSAT), as amended*

On 9 December 1994 the Assembly of INMARSAT confirmed the adoption of amendments to the Operating Agreement which were approved by the Council of INMARSAT at its forty-seventh session relating to changing the title and text of the Operating Agreement by replacing "International Maritime Satellite Organization (INMARSAT)" with "International Mobile Satellite Organization (INMARSAT)" and "INMARSAT" with "Inmarsat", respectively.

The amendments to the Operating Agreement will enter into force 120 days after their approval by two thirds of the Signatories of the Operating Agreement at the time of the confirmation of the amendments, and holding at least two thirds of the total investment shares.

(*c*) Entry into Force of Instruments and Amendments

(i) *Instruments*

PROTOCOL [OF 1976] 314 TO THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971[315]

The conditions for the entry into force of this Protocol were met on 24 August 1994 with the deposit of an instrument of accession by Japan. In accordance with article VI, the Protocol entered into force on 22 November 1994.

(ii) *Amendments*

a. 1991 Amendments to the International Convention for the Safety of Life at Sea, 1974, as amended

The Maritime Safety Committee at its fifty-ninth session (May 1991) adopted by resolution MSC.22(59) amendments to chapter II-2, III, V, VI and VII of the Convention. The conditions for their entry into force were met on 1 July 1993 and the amendments entered into force on 1 January 1994.

b. 1992 Amendments to the International Convention for the Safety of Life at Sea, 1974, as amended

i. The Maritime Safety Committee at its sixtieth session (April 1992) adopted by resolution MSC.24(60) amendments to chapter II-2 of the Convention. The conditions for their entry into force were met on 1 April 1994, and the amendments entered into force on 1 October 1994.

ii. At the same session, the Maritime Safety Committee also adopted by resolution MSC.26(60), amendments to chapter II-2 of the Convention. The conditions for their entry into force were met on 1 April 1994, and the amendments entered into force on 1 October 1994.[316]

iii. The Maritime Safety Committee at its sixty-first session (December 1992) adopted by resolution MSC.27(61) amendments to chapter II-I, II-2, III, and IV of the Convention. The conditions for entry into force were met on 1 April 1994, and the amendments entered into force on 1 October 1994.[317]

iv. At the same session, the Maritime Safety Committee also adopted by resolution MSC.28(61), amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and by resolution MSC.30(61), amendments to the International Code for the Construction and Equipment of Ships Carrying Liquified Gases in Bulk (IGC Code). The conditions for entry into force were met on 1 January 1994, and the amendments entered into force on 1 July 1994.

c. 1992 Amendments to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)

i. The Marine Environment Protection Committee at its thirty-third session (October 1992) adopted by resolution MEPC.55(33), amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and by resolution MEPC.56(33), amendments to the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code). The conditions for entry into force were met on 1 January 1994, and the amendments entered into force on 1 July 1994.

ii. At the same session, the Marine Environment Protection Committee also adopted by resolution MEPC.57(33), amendments to annex II to MARPOL 73/78 (designation of the Antarctic Area as a special area and lists of liquid substances in annex II). The conditions for entry into force were met on 1 January 1994 and the amendments entered into force on 1 July 1994.

iii. The Marine Environment Protection Committee at its thirty-third session (October 1992) adopted by resolution MEPC.58(33), amendments to annex III to MARPOL 73/78 (revised annex III). The conditions for entry into force were met on 30 August 1993, and the amendments entered into force on 28 February 1994.

d. 1993 Amendments to the Convention on Facilitation of International Maritime Traffic, 1965

The Facilitation Committee at its twenty-second session (April 1993) adopted by resolution FAL.4(22) a number of amendments to the annex to the Convention on Facilitation of International Maritime Traffic, 1965. The conditions for entry into force were met 1 June 1994 and the amendments entered into force on 1 September 1994.

e. 1993 Amendments to the Annexes to the Convention on the Prevention of Maritime Pollution by Dumping of Wastes and Other Matter, 1972, as amended

The Contracting Parties to the Convention adopted at their sixteenth Consultative Meeting on 12 November 1993 resolution LC.49(16) concerning phasing out sea disposal of industrial waste. At the same session the Contracting Parties to the Convention also adopted resolution LC.50(16) concerning incineration at sea and resolution LC.51(16) concerning disposal at sea of radioactive wastes and other radioactive matter.

In accordance with the terms of the resolution and article XV(2) of the Convention the amendments entered into force on 20 February 1994 for all Contracting Parties with the exception of those Contracting Parties which made a declaration of non-acceptance.[318]

10. WORLD INTELLECTUAL PROPERTY ORGANIZATION

(*a*) Development cooperation activities in the legal field

During 1994, WIPO received many requests for assistance from developing countries. A total of 108 developing countries, two territories and 12 inter-governmental organizations of developing countries benefited from WIPO's development

cooperation programme in the fields of industrial property and copyright and neighbouring rights. One hundred and one courses, seminars or other meetings were held at the global, regional or national levels, giving training or information to some 9,000 men and women from the government and private sectors. The travel and living expenses of some 1,050 men or women were borne by WIPO, donor member States of WIPO and intergovernmental organizations. Study visits were organized for 70 persons.

As for advisory missions relating to legislation and institution-building, 182 such missions were undertaken to 65 developing countries. The enactment of laws or the revision of existing ones remained the prime objective of missions dealing with legislation.

(*b*) Norm-setting activities

Regarding work on the setting of norms and the exploration of issues in possible need of norm-setting, the high-water mark was the unanimous adoption by the Diplomatic Conference, held in October in Geneva, of the Trademark Law Treaty (TLT).[319] The Treaty, which contains 25 articles and is accompanied by regulations comprising eight rules and eight model international forms, will greatly simplify and harmonize the procedures for the protection of trademarks, including service marks. It will save time and expenses for trademark owners and their representatives and will thereby, have a clearly positive impact in a global economic environment in which trademarks become increasingly important. The TLT is all the more necessary as important differences exist nowadays in the relevant laws in the various countries of the world. Harmonization of trademark law through the new Treaty will therefore benefit not only economic operators but also national and regional industrial property offices.

The Treaty's main features will bring about practical improvements in procedures before the trademark registry, such as the possibility of seeking registration of goods and services belonging to several classes by filing a single application; the obligation for all Contracting Parties to accept applications for the registration of service marks; the prohibition of the requirement of the legalization of signatures; the possibility to obtain the recording of changes in registrations belonging to the same owner through a single request, even where the changes concern several hundred registered marks; the prohibition for trademark registries to require compliance with registration formalities not expressly mentioned in the maximum list of the Treaty; the possibility of dividing applications and registrations into two or more applications or registrations without losing the original filing date; the unification, to 10 years each, of the initial term of registration and each renewal term.

Any State member of WIPO and certain intergovernmental organizations may become party to the TLT. The Treaty may be revised by a diplomatic conference and such a conference may also adopt protocols for the further development of the harmonization of laws on marks.

The TLT was opened for signature on 28 October 1994 and will remain open for signature at WIPO until 27 October 1995. By the end of 1994, it had been signed by 39 States. The Trademark Law Treaty will enter into force three months after five States have deposited their instrument of ratification or accession with the Director General of WIPO who is the depositary of the Treaty.

In October, the WIPO General Assembly decided that the Committee of Experts for the Settlement of Intellectual Property Disputes between States would meet again in 1995, before the September 1995 ordinary session of the WIPO General Assembly, and that the General Assembly, at that future session, would decide, *inter alia*, whether to hold a Diplomatic Conference for the Conclusion of a Treaty on the settlement of intellectual property disputes between States and, if so. when. The text of the proposed rules of procedure for the Diplomatic Conference had been considered and approved in a preparatory meeting held in February.

The Committee of Experts on a Possible Protocol to the Berne Convention,[320] which met in December, examined proposals for the inclusion in the Berne Protocol of provisions concerning the protection of computer programs, databases and the right of distribution, including the rights of rental and importation. The Committee also considered proposals for the abolition of non-voluntary licences for the sound recording of musical works and primary broadcasting and satellite communication, for the extension of the term of protection of photographic works and for the inclusion of provisions on the enforcement of rights.

The Committee of Experts on a Possible Instrument for the protection of the Rights of Performers and Producers of Phonograms, which met immediately afterwards, based its discussions on a memorandum prepared by the International Bureau containing proposals intended to modernize the international rules of protection of performers and producers of phonograms, taking into account such recent technological developments as digital technology. Discussion focused on proposed new definitions of key terms such as "performers", "fixation" and "phonograms" followed by an exchange of views on the economic rights of performers in their performances fixed in phonograms, the economic rights of producers of phonograms in their phonograms and, finally, the moral rights of performers and the right of adaptation of performers and producers of phonograms. Because of the shortness of time, several issues were put aside for later discussion, including the economic rights of performers in their live performances, "home copying" and enforcement of rights.

It was agreed that a further session of the two committees would be held jointly in 1995.

A Consultation Meeting was held in February on the possible establishment of a voluntary international numbering system for certain categories of literary and artistic works and for phonograms. The Consultation Meeting created four working groups on a possible numbering system for musical works and for phonograms, for computer programs, for printed works and for audio-visual works, respectively, all of which met and had useful discussions in the first half of 1994. Many participants felt that work on these issues should continue at the national and international levels.

Regarding the Patent Law Treaty, the Assembly of the Paris Union agreed in October that a Consultative Meeting for the Further Preparation of the Diplomatic Conference for the Conclusion of the Patent Law Treaty should be convened by the Director General of WIPO in the first half of 1995 in order to try to recommend solutions to the principal issues involved so that, in due course, the Diplomatic Conference could be reconvened. The results of the Consultative Meeting should be considered by the 1995 sessions of the Governing Bodies of WIPO. The proposed Treaty would no longer be referred to as a "Treaty Supplementing the Paris Convention as far as Patents are Concerned" but as the "Patent Law Treaty", with a view to delinking it from the Paris Convention for the Protection of Industrial Property,[321] that is, lifting the obligation of being a party to the Paris Convention as a condition for being a party to the proposed Treaty.

(*c*) WIPO Arbitration Center

The WIPO Arbitration Center became operational on 1 October 1994. The commencement of operations was preceded by various preparatory steps culminating in the first Meeting of the WIPO Arbitration Council in September. At that meeting, the WIPO Arbitration Council, comprising 10 eminent international experts, discussed the WIPO Mediation, Arbitration and Expedited Arbitration Rules and the model WIPO contract clauses and submission agreements, which subsequently entered into force on 1 October 1994. It further considered the composition of the WIPO Arbitration Consultative Commission, which was established by the Director General of WIPO. The Commission had 34 members on December 31, 1994.

(*d*) Countries in transition to a market-economy system

In 1994, WIPO's contacts with countries in transition to a market-economy system were primarily in connection with those countries' programmes for upgrading their intellectual property systems. Government leaders and officials from several of those countries had discussions in Geneva with the Director General and studied the International Bureau's work, while WIPO officials visited the capitals of several of the countries concerned to give further advice. A number of officials were invited for study visits at WIPO and to various countries. The International Bureau assisted them, on request, in the preparation of laws dealing with one or more aspects of intellectual property and gave advice on adherence to WIPO-administered treaties (principally by depositing with the Director General a declaration of continued application). Advice was also given on the establishment of administrative structures to implement those laws, while assistance and training were extended in relation to accession to WIPO-administered treaties. Staff members of the International Bureau lectured in seminars and meetings to promote awareness of the importance of intellectual property in those countries as well as in special training courses.

The International Bureau also gave advice and assistance relating to the Interstate Council on the Protection of Industrial Property (which groups nine States of the former Soviet Union, namely, Armenia, Belarus, Kazakhstan, Kyrghzstan, the Republic of Moldova, the Russian Federation, Tajikistan, Ukraine and Uzbekistan) on a plan to set up a regional patent system under the Eurasian Patent Convention.[322] That Convention was initialled in Geneva in February 1994, at the headquarters of WIPO, and signed by the plenipotentiary representatives of the said nine States in July in Minsk. The International Bureau participated actively in all the meetings that had taken place to draft and finalize the Convention.

(*e*) New adherences to Treaties

In 1994, there was a marked increase in the number of States party to treaties administered by WIPO. The following States became party to, *inter alia*, the following treaties (the figures in brackets indicate the total number of States party to the treaties on 31 December 1994):

(i) *Convention Establishing the World Intellectual Property Organization*: Andorra, Brunei Darussalam, Georgia, Guyana, Kyrgyzstan, Laos, Tajikistan (150);[323]

(ii) *Paris Convention for the Protection of Industrial Property*: Armenia, Estonia, Georgia, Guyana, Kyrgyzstan, Liberia, Lithuania, Paraguay, Singapore, Tajikistan (127);

(iii) *Berne Convention for the Protection of Literary and Artistic Works*: Estonia, Guyana, Lithuania, Russian Federation, United Republic of Tanzania (110);

(iv) *Madrid Agreement concerning the International Registration of Marks*: Armenia, Kyrgyzstan, Latvia, Republic of Moldova, Tajikistan (43);[324]

(v) *Hague Agreement concerning the International Deposit of Industrial Designs*: Republic of Modova, SlovEnia (25);[325]

(vi) *Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks*: China, Latvia, Tajikistan (41);[326]

(vii) *International convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*: Hungary, Iceland (47); [327]

(viii) *Locarno Agreement Establishing an International Classification for Industrial Designs*: Tajikistan (22);[328]

(ix) *Patent Cooperation Treaty (PCT)*: Armenia, Estonia, Georgia, Kenya, Kyrgyzstan, Liberia, Lithuania, Mexico, Republic of Moldova, Singapore, Swaziland, Tajikistan, Uganda (76);[329]

(x) *Strasbourg agreement concerning the International Patent Classification*: Tajikistan (28);[330]

(xi) *Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms*: Colombia, Russian Federation (52);[331]

(xii) *Convention relating to the Distribution of Programme-Carrying Signals transmitted by Satellite*: Bosnia and Herzegovina (19);[332]

(xiii) *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure*: Latvia, Republic of Moldova, Singapore, Tajikistan (33);[333]

(xiv) *Nairobi Treaty on the Protection of the Olympic Symbol*: Republic of Moldova, Tajikistan (36);[334]

(xv) *Treaty on the International Registration of Audio-visual Works*: Colombia, Peru, Senegal (12).[335]

(*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 neighboring rights, both in their original languages and in English and French translations. Those texts were published in *Industrial Property Laws and Treaties* (*Lois et traités de propriété industrielle*) and *Copyright and Neighboring Rights Laws and Treaties* (*Lois et traités de droit d'auteur*) as well as in the monthly periodicals *Industrial Property*/*La porpriété industrielle* and *Copyright*/*Droit d'Auteur*. Since April 1994, WIPO has issued a CD-ROM, entitled "IPLEX", which contains the texts of treaties and legislation in the field of intellectual property.

11. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

(*a*) Membership

Approval of applications for non-original membership

At its Seventeenth Session (26-28 January 1994), the Governing Council approved the non-original membership in IFAD of Azerbaijan, Croatia, Eritrea, Mongolia, Tajikistan and the former Yugoslav Republic of Macedonia and decided that those seven States should be classified as members of category III in accordance with articles 3.2(b) and 13.1(c) of the Agreement Establishing IFAD and section 10 of the By-Laws for the Conduct of Business of the Fund.

(*b*) Review of IFAD'S Resource requirements and related governance issues

Establishment of a Special Committee of the Governing Council

The Seventeenth Session of the Governing Council noted with great concern the increased difficulties which IFAD had faced in mobilizing resources for replenishment, particularly for the Fourth Replenishment of IFAD's Resources, which seriously affected IFAD's ability to maintain its operations at an appropriate level. Accordingly, the Governing Council unanimously adopted resolution 80/XVII deciding that a Special Committee of the Governing Council be established consisting of 12 members from each of categories I, II and III, respectively, and be under the joint chairmanship of the Chairman of the Governing Council and the President of IFAD.

The Special Committee was requested to review the following issues: (a) the modalities of financing IFAD's operations; (b) the voting rights of member States; and (c) the composition of the Executive Board. In carrying out its work, the Special Committee was requested to keep in mind the final objective of recommending the necessary changes to enable IFAD to obtain a successful Fourth Replenishment and to facilitate future replenishments.

The Special Committee met in five sessions during 1994, at the end of which it agreed on a set of working principles to guide its work:

(i) There should be a link between individual contributions and voting rights so as to provide an incentive to all member countries to increase their contributions to IFAD's resources;

(ii) The total votes should be divided into two parts: membership votes, which would be distributed equally among members, irrespective of the level of their contributions; and contribution votes, which would be distributed in accordance with cumulative payment of contributions;

(iii) All member countries of IFAD should have equal access to both membership and contribution votes;

(iv) The important role of developing countries in the governance of IFAD should be preserved. This would be done by dividing the total votes between membership and contribution votes in such a way as to ensure that those members of the current category III always receive one third of the total votes as membership votes;

(v) To create sufficient incentive, it was agreed by the members that there be a balance between the weight given to past and future contributions;

(vi) The application of these principles would produce outcomes that are category or country group neutral;

(vii) On the question of arrears in making payments against contributions, for the purpose of calculating voting rights, members' contribution should continue to be adjusted to take into account the non-payment of contributions and non-payment against drawdown calls of the promissory notes.

The following agreements were reached, regarding:

(*a*) *The modalities of financing IFAD's operations*. Members all agreed that it would be desirable to increase the level of commitments but that issue was closely linked to the issues of replenishment, as well as IFAD's liquidity policies. The Special Committee did not reach a conclusion on a specific level of commitments since it was agreed that the appropriate commitment level should be decided upon completion of the Fourth Replenishment;

(*b*) *The voting rights of member States*; it was decided that:

(i) The initial position for the current 1,800 votes would be that all members would receive an equal number of membership votes (approximately five) and the remaining votes would be distributed according to members' paid cumulative contributions in convertible currencies up to the end of the Third Replenishment;

(ii) For future replenishments, beginning with the Fourth Replenishment, additional votes would be created at the rate of 100 votes for each US$ 158 million of replenishment contributions or a fraction thereof. The total additional votes created would be divided between membership and contribution votes in such a way as to ensure that those members of the current category III received one third of the total votes as membership votes with each membership vote being equal for all countries.

(*c*) *The composition of the Executive Board*:

(i) Priority attention should be given to appropriate and adequate regional and subregional representation;

(ii) The structure of membership of the Executive Board should reflect the role of developing countries in the governance of IFAD;

(iii) Members' cumulative paid contributions should be given due weight;

(iv) Members in arrears on the payment of their contributions and against which provisions were made should not be eligible for Executive Board membership or should cease to exercise the privilege of Executive Board membership.

It was agreed that the current number of 18 members and up to 18 alternates in the Executive Board should be retained. It was also agreed that countries from the current category I would share eight seats, countries from the current category II would share four seats and countries from the current Category III would share six seats on the Executive Board.

On the issue of the category structure of IFAD, the Special Committee recommended that the final text of the resolution dealing with governance issues would have the following two introductory paragraphs inserted:

"The International Fund for Agriculture Development (IFAD) is an institution unique within the United Nations family, established with the objective of enhancing agricultural development, with the focus on the food sector and the activities of poor farmers, and as a special partnership in which its members agreed to join together to raise funds and share in the governance arrangements. The Agreement Establishing IFAD accordingly organized membership into three categories in order to reflect this special character of the institution, in particular the contribution of oil-producing and exporting countries and other developing countries to IFAD's financing.

"The concept of partnership, and the idea of IFAD as a combined endeavour among industrialized countries, other donors and recipients for the joint determination of how best to achieve IFAD's objectives, for collective decision-taking on all matters pertaining to the operations of the organization and for the purposes of fund-raising, will continue under the new arrangements. The membership is not codified into formal categories in the revised

Agreements itself, reflecting the need for flexibility, in that country circumstances can be expected to change and evolve over time. However, the membership continues to work through groupings of like-minded countries for decisions on policy and operational matters, for the purpose of consultation over financial affairs including fund-raising, and for other reasons related to the governance of IFAD such as membership of governing bodies and character of IFAD. The formation of such groups will be further negotiated and decide by the various member countries themselves."

The report and recommendations of the Special Committee were forwarded by the Executive Board to the Governing Council for consideration at its Eighteenth Session.

(*c*) Amendment of IFAD's lending terms and conditions

The Governing Council, at its Seventeenth Session, adopted resolution 83/XVII amending IFAD's Lending Policies and Criteria. Loans to developing member countries of IFAD would continue to be provided upon highly concessional, intermediate and ordinary terms. The criteria for determining the terms to apply to a specific country would be as follows:

(i) Those developing member countries:

(*a*) Having a gross national product (GNP) per capita of US$ 805 or less in 1992 prices or classified as IDA-only countries, should normally be eligible to receive loans form IFAD on highly concessional terms. The total amount of the loans provided each year on highly concessional terms should amount to approximately two-thirds of the total amount lent annually by IFAD;

(*b*) Having a GNP per capita of between $806 and $1,305 inclusive in 1992 prices should be eligible to receive loans form IFAD on intermediate terms;

(*c*) Having a GNP per capita of $1,306 or above in 1992 prices should normally be eligible to receive loans on ordinary terms;

(ii) For those developing member countries in which there was a significant difference between GNP per capita and gross domestic product (GDP) per capita, the GDP per capita should be used as the criterion for determining the applicable lending terms within the same monetary limits;

(iii) The Executive Board should take account of the impact of the recent devaluation of the CFA franc in determining which lending terms were applicable to the countries concerned;

(iv) In allocating resources among countries eligible for loans on the same terms, priority should be given to those countries characterized by low food security and severe poverty in rural areas;

(*a*) Loans on highly concessional terms should be free of interest but bear a service charge of three-fourths of one per cent (0.75%) per annum and have a repayment period of 40 years, including a grace period of 10 years;

(*b*) Loans on intermediate terms should have a rate of interest equivalent to 50 per cent of the variable reference interest rate, as determined annually by the Executive Board, and a repayment period of 20 years, including grace a period of 5 years;

(*c*) Loans on ordinary terms should have a rate of interest equivalent to 100 per cent of the variable reference interest rate, as determined annually by the Executive Board, and a repayment period of 15 to 18 years, including a grace period of 3= years;

(*d*) No commitment charge should be levied on any loan.

The Executive Board would:

(*a*) Determine, on the basis of the variable ordinary interest rate of international financial concerned with development, the reference rate of interest for application in IFAD, which should provide the basis for the review and revisions prescribed in sub paragraph (b) below;

(*b*) Decide, annually, the rates of interest to be applied, respectively, to loans on intermediate and ordinary terms. For that purpose, it should review annually the rates of interest applicable to loans on intermediate and ordinary terms and revise such rates, if necessary, on the basis of the reference rate of interest in effect on 1 January of each year.

The Executive Board was requested to report periodically to the Governing Council on the exercise of the authority vested in it and on the application of the country eligibility criteria and to review periodically IFAD's Lending Policies and Criteria in the light of changing circumstances and, if it deemed necessary, recommend to the Governing Council such modifications thereto as might be appropriate.

12. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Constitutional matters

One State — Uzbekistan — became a member of UNIDO[336] thus bringing the membership of UNIDO before the end of 1994 to a total of 166 member States.

(*b*) Agreements with intergovernmental, non-governmental, governmental and other organizations as well as Governments.

Based on the Guidelines regarding Relationship Agreements with organizations of the United Nations system other than the United Nations, and with intergov-

ernmental and governmental and other organizations, adopted by the General Conference[337] in 1994, UNIDO concluded the following agreements:

(i) Upon approval by the Industrial Development Board at its ninth and eleventh sessions,[338] UNIDO concluded relationship agreements with the following intergovernmental organizations not in the United Nations system:

— Relationship agreement with the Economic Cooperation Organization, signed on 25 January 1994;[339]

— Relationship agreement with the League of Arab States, signed on 15 June 1994.[339]

(ii) UNIDO concluded agreements or working arrangements with the following Governments or governmental organizations:

— Memorandum of Understanding with Slovakia on cooperation in industrial development, signed on 20 January 1994;[339]

— Memorandum of Understanding with Viet Nam on cooperation in industrial development, signed on 22 November 1994;[339]

— Memorandum of Understanding with the Islamic Republic of Iran on cooperation in industrial development, signed on January 1994;[339]

— Memorandum of Understanding with the Netherlands, concerning associate experts, signed on 21 December 1994;[339]

— Agreement with India on the establishment of an India-UNIDO working group, signed on 24 April 1994. [339]

(iii) UNIDO concluded the following agreements with governmental and private institutions:

— Memorandum of Understanding with the African Business Round Table, signed on 29 November 1994; [339]

— Working arrangement with the Chilean International Cooperation Agency, signed on 7 and 29 March 1994; [339]

— Memorandum of Understanding with the BIO 95 Foundation, signed on 27 May 1994; [339]

(*c*) [339]Agreements with the United Nations or its organs

(i) With the United Nations International Drug Control Programme (UNDCP), UNIDO concluded a Memorandum of Understanding on cooperation, signed on 25 October 1994; [339]

(ii) With the United Nations Educational, Scientific and Cultural Organization (UNESCO), UNIDO concluded a Memorandum of Understanding on areas of cooperation, signed on 21 October 1994; [339]

(iv) With the United Nations Office at Vienna, UNIDO concluded an Agreement on transitional procedures for transfer of purchasing services, signed on 23 December 1994. [339]

(*d*) Standard Basic Cooperation Agreements

Standard Basic Cooperation Agreements were concluded with the Gambia, Tunisia and Uganda. [339]

13. INTERNATIONAL ATOMIC ENERGY AGENCY

Agreement on the privileges and immunities of the International Atomic Energy Agency

During 1994, there was no change in the status of the Agreement on the Privileges and Immunities of IAEA.[340] At the end of 1994 there were 65 parties to the Agreement.

Convention on the Physical Protection of Nuclear Material[341]

During 1994, two States — Chile and Estonia — became Parties to the Convention bringing the total at year's end to 52.

Convention on Early Notification of a Nuclear Accident [342]

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency [343]

During 1994, three States — Estonia, Liechtenstein and Lithuania — acceded to the Notification Convention. By the end of 1994, there were 74 States parties to the Convention.

In 1994, Estonia and Liechtenstein also acceded to the Convention on Assistance, bringing the total number of parties to that Convention to 70 by year end.

Vienna Convention on Civil Liability for Nuclear Damage,1963[344]

During 1994, Bulgaria, the Czech Republic and the former Yugoslav Republic of Macedonia acceded to the Vienna Convention, bringing the total number of parties to 24 by the end of the year.

Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention[345]

Bulgaria, Croatia, the Czech Republic, Estonia and Finland became parties during the year, making a total of 17 by the end of 1994.

African Regional Cooperative Agreement[346]

Two additional States — Niger and Côte d'Ivoire — accepted the African Regional Cooperative Agreement for Research, Development and Training related to Nuclear Energy (AFRA) during 1994, bringing the total number of parties to 19 States by the end of the year.

Regional Cooperative Agreement for Research, Development and Training related to Nuclear Science and Technology, 1987 (RCA Agreement) [347]

Three additional States — Singapore, New Zealand and Myanmar — accepted the Agreement, making a total of 17 States Parties.

Convention on Nuclear Safety [348]

The Convention on Nuclear Safety, adopted by a Diplomatic Conference in Vienna on 17 June 1994, was opened for signature on 21 September 1994. During that year the Convention was signed by 54 States and ratified by 1 State (Norway). The Convention will enter into force on the ninetieth day after the date of deposit with the depositary of the twenty-second instrument of ratification, acceptance, or approval, including the instruments of 17 States, each having at least one nuclear installation which has achieved criticality in a reactor core.

Safeguards Agreements

During 1994, Safeguards Agreements were concluded between IAEA and eight States pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons:[349] Belarus, Croatia, Dominica, Kazakhstan, Saint Kitts and Nevis, Slovenia, Uzbekistan and Zambia. A *sui generis* Comprehensive Safeguards Agreement with Ukraine was also concluded. A Unilateral Safeguards Agreement was concluded with India.

The Agreements with India[350] and Zambia,[351] two project agreements with Ghana (concluded in 1991) and with Colombia (concluded in 1993), as well as the safeguards agreement concluded with Armenia[353] (in 1993) and the comprehensive Safeguards Agreement concluded with Argentina, Brazil and the Brazilian-Argentine Agency for Accounting and Control (in 1991), entered into force in 1994.

The Non-Proliferation Treaty Safeguards Agreement with the Socialist Federal Republic of Yugoslavia,[354] which entered into force in 1973, continues to be applied in Croatia and in Slovenia pending entry into force of the Safeguards Agreements concluded in 1994, to the extent relevant to their respective territories.

By the end of 1994, there were 199 Safeguards Agreements in force with 118 States,[355] 101 of which agreements were concluded pursuant to the Non-Proliferation and/or the Treaty of Tlateloco[356] with 104 non-nuclear-weapon States and three nuclear-weapon States.

Liability for Nuclear Damage

In 1994, the IAEA Standing Committee on Liability for Nuclear Damage held its ninth (7-11 February 1994) and tenth (31 October - 4 November 1994) sessions as well as an intersessional working group (9-13 May 1994). Work was concentrated on the proposals for the revision of the Vienna Convention of 21 May 1963 and establishment of a supplementary compensation system. Consideration of the two issues continued in an integrated manner with a view to submitting them to the same diplomatic conference. The proposals on international State liability and its relationship to the civil liability regime were not directly addressed but remained before the Committee for consideration in the context of the Vienna Convention revision.

In the absence of agreement on the basis of the drafts which had been under consideration (the "levy" and "pool" drafts), the Standing Committee examined new approaches to the structure of compensation for both the revised Vienna Convention and a supplementary funding system. It was agreed to insert an Installation State tier in the revised Vienna Convention, and building on this, a new single draft convention on supplementary funding was prepared for further discussion. It is linked to the Vienna and Paris Conventions and envisages an additional level of compensation provided by all States parties collectively in accordance with an agreed formula (the "collective State contributions" draft). The draft contains alternative formulations for some fundamental issues such as geographical scope, system of and criteria for contributions including the status States without nuclear installations in this regard.

The Standing Committee also had before it a new proposal for a convention on supplementary compensation for transboundary nuclear damage from a nuclear incident at a civil nuclear power plant (the "umbrella" draft). This draft is a freestanding instrument that may be adhered to irrespective of participation in the Vienna or Paris Convention and is devoted exclusively to transboundary nuclear damage. It was agreed to carry out an in-depth examination of the "umbrella" draft, *inter alia*, its relationship to existing conventions.

Several member States from Latin America stated that they were studying the creation of a regional mechanism for nuclear liability taking into account the characteristics of their nuclear sectors. They pointed out that the formula for a worldwide supplementary funding system should be compatible with the regional approach.

NOTES

[1]United Nations, *Treaty Series*, vol. 729, p. 161.

[2]Adopted by a recorded vote of 103 to 40, with 25 abstentions.

[3]Adopted by a recorded vote of 168 to none, with 3 abstentions.

[4]International Legal Materials, vol. XXXII, No. 3 (May 1993), p. 800.

[5]United Nations, *Treaty Series*, vol. 1015, p. 163.

[6]Adopted without a vote.

[7]Adopted by a recorded vote of 116 to 4, with 49 abstentions.

[8]United Nations, *Treaty Series*, vol. 480, p. 43.

[9]For the text see Jozef Goldblat, *Arms Control: A Guide to Negotiations and Agreements* (London, Thousand Oaks; New Delhi, Sage Publications, 1994), pp. 591-618.

[10]Adopted by a recorded vote of 78 to 43, with 38 abstentions.

[11]Adopted without a vote.

[12]Adopted without a vote.

[13]United Nations, *Treaty Series*, vol. 634, p. 281.

[14]Adopted by a recorded vote of 161 to 3, with 3 abstentions.

[15]BWC/SPCONF/1, part II.

[16]Adopted without a vote.

[17]Adopted by a recorded vote of 170 to none, with 1 abstention.

[18]United Nations, *Treaty Series*, vol. 610, p. 205.

[19]A/49/502.

[20]Adopted by a recorded vote of 166 to none, with 5 abstentions.

[21]Adopted by a recorded vote of 118 to 4, with 47 abstentions.

[22]Adopted without a vote.

[23]For the text see A/CONF.95/15 and Corr.1-5. See also *Juridical Yearbook, 1980*, p. 113.

[24]Adopted by a recorded vote of 171 to none, with 1 abstention.

[25]Adopted by a recorded vote of 164 to none, with 7 abstentions.

[26]Adopted by a recorded vote of 158 to none, with 11 abstentions.

[27]Adopted without a vote.

[28]Adopted without a vote.

[29]For the report of the Subcommittee, see A/AC.105/573.

[30]A/AC.105/C.2/L.192.

[31]A/AC.105/C.2/L.182/Rev.1.

[32]See *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 20* (A/49/20), chap. II, sect. C.

[33]Adopted without a vote.

[34]See A/49/618.

[35]Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX), annex); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (resolution 34/68, annex).

[36]Adopted without a vote.

[37]See A/49/704.

[38]United Nations, *Treaty Series*, vol. 402, p. 71.

[39]*International Legal Materials*, vol. XXX, No. 6 (November 1991), p. 1461.

[40]A/49/370.

[41]See A/49/370.

[42]Adopted without a vote.

[43]See A/49/621.

[44]A/49/136.

[45]E/AC.51/1994/3 and Corr.1.

[46]The text is contained in the annex to General Assembly resolution 49/59.

[47]A/46/185 and Corr.1, annex.

[48]The text is contained in the annex to General Assembly resolution 49/57.

[49]Adopted by a recorded vote of 78 to 43, with 38 abstentions.

[50]See A/49/699.

[51]General Assembly resolution 44/23.

[52]A/47/277-S/24111; see *Official Records of the Security Council, Forty-seventh Year, Supplement for April, May and June 1992*, document S/24111.

[53]For detailed information, see A/49/223/E/1994/105.

[54]UNEP/GCSS.IV/2. annex.

[55]Ibid., annex.

[56]Adopted without a vote.

[57]See A/49/729/Add.6.

[58]*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1(vol. I and vol. I/Corr.1, vol. II, vol. III and vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions Adopted by the Conference*, resolution 1, annex II.

[59]Adopted without a vote.

[60]See A/49/729/Add.6.

[61]*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex I.

[62]Adopted without a vote.

[63]See A/49/729/Add.2.

[64]A/AC.237/18 (Part II)/Add.1 and Corr.1, annex I.

[65]Adopted without a vote.

[66]See A/49/729/Add.6.

[67]*International Legal Materials*, vol. XXVI, No. 6 (November 1987), p. 1550.

[68]Adopted without a vote.

[69]See A/49/729/Add.6.

[70]A/49/84/Add.2, annex, appendix II.

[71]Adopted without a vote.

[72]See A/49/729/Add.4.

[73]Adopted without a vote.

[74]See A/49/729/Add.6.

[75]See United Nations Environment Programme, *Convention on Biological Diversity* (Environmental Law and Institutions Programme Activity Centre), June 1992.

[76]Adopted without a vote.

[77]See A/49/729/Add.6.

[78]Adopted without a vote.

[79]See A/49/729/Add.6.

[80]*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.

[81]Adopted without a vote.

[82]See A/49/729/Add.6.

[83]*Report of the United Nations Conference on Environment and Development, Rio de Janeiro*, 3-14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

[84]See A/CONF.164/INF/2, annex 2.

[85]Adopted without a vote.

[86]See A/49/729/Add.3.

[87]Adopted without a vote.

[88]See A/49/726.

[89]Adopted without a vote.

[90]See A/49/606.

[91]A/49/593

[92]Adopted without a vote.

[93]See A/49/158.

[94]Adopted without a vote.

[95]See A/49/606.

[96]E/CN.15/1994/10 and Corr.1, paras. 71-84.

[97]Adopted without a vote.

[98]See A/49/159.

[99]See A/49/748, annex, sect. I.A.

[100]United Nations, *Treaty Series*, vol. 520, p. 151.

[101]Ibid., vol. 1019, p. 175.

[102]Ibid., vol. 976, p. 3.

[103]Ibid., p. 105.

[104]E/CONF.82/15 and Corr.2; issued also as a United Nations publication (Sales No. E.91.XI.6).

[105]Adopted without a vote.

[106]See A/49/608.

[107]Resolution S-17/2, annex.

[108]See A/49/139-E/1994/57.

[109]United Nations, *Treaty Series*, vol. 993, p. 3.

[110]Ibid., vol. 999, p. 171.

[111]Ibid.

[112]General Assembly resolution 44/128, annex.

[113]See General Assembly resolution 34/180, annex; reproduced in *Juridical Yearbook, 1979*, p. 115; see also United Nations, *Treaty Series*, vol. 1249, p. 13.

[114]Adopted without a vote.

[115]See A/49/607.

[116]A/49/308, sect. II.

[117]*Official Records of the General Assembly, Forty-eighth Session, Supplement No. 38* (A/48/38).

[118]Ibid., *Forty-ninth Session, Supplement No. 38* (A/49/38).

[119]General Assembly resolution 44/25, annex.

[120]Adopted without a vote.

[121]See A/49/611.

[122]A/49/409.

[123]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

[124]Adopted without a vote.

[125]See A/49/604.

[126]A/49/403.

[127]Adopted without a vote.

[128]See A/49/604.

[129]*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 18* (A/49/18).

[130]See General Assembly resolution 3068 (XXVIII), annex; reproduced in *Juridical Yearbook, 1973*, p. 70; see also United Nations, *Treaty Series*, vol. 1015, p. 243.

[131]General Assembly resolution 45/158, annex.

[132]Adopted without a vote.

[133]See A/49/610/Add.1.

[134]A/49/405.

[135]See General Assembly resolution 39/36, annex; also reproduced in *Juridical Yearbook, 1984*, p. 135;

[136]Adopted without a vote.

[137]See A/49/610/Add.1.

[138]*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44* (A/49/44).

[139]Ibid., annex III.

[140]Adopted without a vote.

[141]See A/49/610/Add.1.

[142]A/49/537, annex, sect. IV.

[143]A/44/539, A/46/503 and A/48/508 and Corr.1.

[144]A/49/537.

[145]Adopted without a vote.

[146]See A/49/610/Add.2.

[147]Adopted by a recorded vote of 155 to 1, with 12 abstentions.

[148]See A/49/610/Add.2.

[149]Adopted without a vote.

[150]See A/49/610/Add.2.

[151]A/49/512.

[152]Adopted without a vote.

[153]See A/49/752.

[154]A/49/402 and Add.1.

[155]Adopted without a vote.

[156]See A/49/610/Add.2.

[157]General Assembly resolution 47/135

[158]Adopted without a vote.

[159]See A/49/610/Add.2.

[160]Adopted without a vote.

[161]See A/49/610/Add.2.

[162]Adopted without a vote.

[163]A/49/605.

[164]A/37/351/Add.1 and Corr. 1, annex, sect. VIII, recommendation 1 (IV).

[165]A/49/435.

[166]Adopted without a vote.

[167]See A/49/607.

[168]Adopted without a vote.

[169]See A/49/607.

[170]A/CONF.157/24 (Part I), chap. III.

[171]Resolution 317 (IV), annex

[172]United Nations, *Treaty Series*, vol. 212, p. 17.

[173]Adopted without a vote.

[174]See A/49/610/Add.2.

[175]For detailed information, see *Official Records of the General Assembly, Supplement for No. 12* (A/49/12).

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

[177]Ibid., vol. 606. p. 207.

[178]See *Official Records of the General Assembly, Forty-ninth Session, Supplement for No. 12A* (A/49/12 and Add.1).

[179]ST/HCR (092.1)/G81.

[180]ST/HCR (092.1)/G8.

[181]Adopted without a vote.

[182]See A/49/609.

[183]A/49/342-S/1994/1007; see *Official Records of the Security Council, Forty-ninth year, Supplement for July, August and September 1994*, doc. S/1994/1007.

[184]Adopted without a vote.

[185]See A/49/609.

[186]A/49/577 and Corr. 1.

[187]A/37/145, A/38/450, A/40/358 and Add.1 and 2, A/41/472, A/43/734 and Add.1, A/45/524 and A/47/352.

[188]*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).

[189]See document A/49/631.

[190]The Commission shall remain in existence, in accordance with paragraph 13 of resolution I of the Third United Nations Conference on the Law of the Sea, until the conclusion of the first session of the Assembly of the International Seabed Authority.

[191]See document A/49/631.

[192]Adopted by a recorded vote of 131 to 1, with 7 abstentions.

[193]See General Assembly resolution 37/66.

[194]For the composition of the Court, see General Assembly decision 49/322.

[195]As of 31 December 1994, the number of States recognizing the jurisdiction of the Court as compulsory, in accordance with declarations filed under Article 36, paragraph 2, of the Statute of the International Court of Justice, stood at 60.

[196]For detailed information, see *International Court of Justice Yearbook. 1993-1994*, No. 48 and *International Court of Justice Yearbook, 1994-1995*, No. 49.

[197]*I.C.J. Reports 1994*, p. 6.

[198]*I.C.J. Reports 1986*, p. 580, para. 50.

[199]*I.C.J. Reports 1994*, p. 43.

[200]Ibid., pp. 44-50 and 51-92.

[201]Ibid., pp. 93-103.

[202]Ibid., p. 112.

[203]Ibid., p. 129.

[204]Ibid., pp. 130-131 and 132.

[205]Ibid., pp. 133-149.

[206]*I.C.J. Reports 1993*, p. 319.

[207]*I.C.J. Reports 1994*, p. 151.

[208]Ibid., p. 3.

[209]Ibid., p. 109.

[210]For the membership of the Commission, see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10* (A/49/10), chap. I, sect A.

[211]For detailed information, see *Official Records of the General Assembly, Forty Ninth Session, Supplement No. 10* (A/49/10).

[212]A/CN.4/460 and Corr.1.

[213]A/CN.4/L.491/Rev.2 and Add.1 to 3.

[214]A/CN.4/462 and Corr.1.

[215]A/CN.4/453/Add.2 and 3.

[216]A/CN.4/461/Add.1.

[217]A/CN.4/461 and Add.2 and Corr.1.

[218]A/CN.4/459.

[219]*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10* (A/49/10).

[220]Adopted without a vote.

[221]See A/49/738.

[222]For the membership of the Commission, see *Official Records of the General Assembly, Forty-ninth Session, Supplement for No. 17 and Corrigendum* (A/49/17 and Corr.1), chap. I, sect B.

[223]For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXV: 1994 (United Nations publication, Sales No. E.95.V.20).

[224]*Official Record of the General Assembly, Forty-seventh Session, Supplement No. 17* (A/47/17), annex I.

[225]A/CN.9/396 and Add.1.

[226]A/CN.9/388 and A/CN.9/391.

[227]A/CN.9/387 and A/CN.9/390.

[228]A/CN.9/SER.C/ABSTRACTS/1, 2 and 3.

[229]Adopted without a vote.

[230]See A/49/739.

[231]Adopted without a vote.

[232]A/49/739.

[233]*Official Records of the General Assembly, Forty-ninth Session, Supplement for No. 17 and corrigendum* (A/49/17 and Corr.1), annex I.

[234]A/CN.9/403.

[235]Adopted without a vote.

[236]See A/49/735.

[237]A/49/255 and Add.1 and Corr.1.

[238]United Nations, *Treaty Series*, vol. 1125, pp. 3 and 609.

[239]Ibid., vol. 75, pp. 31, 85, 135 and 287.

[240]Adopted without a vote.

[241]See A/49/736.

[242]A/49/295 and Add.1 and 2.

[243]Adopted without a vote.

[244]See A/49/737.

[245]A/49/323 and Add.1 and 2.

[246]A/C.6/49/L.10.

[247]Adopted by a recorded vote of 143 to none, with 8 abstentions.

[248]See A/49/738.

[249]Adopted without a vote.

[250]See A/49/738.

[251]*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10* (A/49/10).

[252]Adopted without a vote.

[253]See A/49/740.

[254]*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 26* (A/49/26).

[255]Adopted by a recorded vote of 155 to none, with 1 abstention.

[256]A/49/741 and Corr.1.

[257]*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 33* (A/49/33).

[258]Adopted without a vote.

[259]See A/49/741 and Corr.1.

[260]See chap. IV of the present *Yearbook* for the text of the Convention.

[261]Adopted without a vote.

[262]See A/49/742.

[263]Adopted without a vote.

[264]See A/49/743.

[265]A/49/257 and Add.1-3.

[266]Adopted without a vote.

[267]See A/49/744.

[268]For detailed information covering the period from 1 July 1992 to 30 June 1994, see *Official Records of the General Assembly, Forty-ninth Session Supplement for No. 14* (A/49/14). For the period from 1 July 1994 to June 1996, Supplement No. 14(A/51/14); for the period from 1 July 1994 to 30 June 1996, see ibid., *Fifty-first Session, Supplement No. 14* (A/51/14).

[269]Adopted without a vote.

[270]See A/49/731.

[271]A/49/634.[272]ILC, 81st session, 1994, *Record of Proceedings*, No.2; No.11, pp. 51-52; No.18, pp. 21-22; English, French, Spanish; see also *Official Bulletin* of the ILO, vol. LXXVII, Series A, No.2, pp. 154-155.

[273]*Official Bulletin* of the ILO, vol. LXXVII, 1994, Series A, No.2, pp. 128-126; English, French, Spanish. (Information on the Preparatory work for the adoption of instruments, which, by virtue of the double discussion procedure normally covers a period of two years, is given in order to facilitate reference work.) Regarding the preparatory work, see: *First discussion* - Part-Time Work, ILC, 80th session (1993); Report V(1) and V(2), iv + 92 and 122 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC 80th (1993) *Record of Proceedings* No.27; No.29, pp. 1-8; English, French, Spanish. *Second discussion* - Part-Time Work, ILC, 81st session (1994), Report IV (1), Report IV (2A), Report IV(2B); 12, 95 and 20 pages respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC 81st session (1994), *Record of Proceedings*, No.23; No.27, pp. 15- 29; English, French, Spanish.

[274]This report has been published as report III (part 4) to the 81st session of the Conference (1994) and comprises two volumes: vol. A: General Report and Observations concerning particular countries: report III (Part 4A), xx + 558 pages; English, French, Spanish. vol. B.: General Survey of the Reports on the Freedom of Association and the Right to Organize Convention (No.87), 1948, and the Right to Organize and Collective Bargaining Convention (No.98), 1949, Report III (Part 4B , xi + 157 pages; English, French, Spanish.

[275]United Nations, Treaty Series, vol. 15, p. 40.

[276]GB.259/15/20.

[277]GB.260/6/5.

[278]GB.261/14/10.

[279]GB.261/14/11.

[280]GB.261/14/12.

[281]GB.261/14/13.

[282]GB.261/14/14.

[283]GB.261/14/15.

[284]GB.261/14/8.

[285]GB.261/14/9.

[286]GB.259/15/30.

[287]GB.261/14/25.

[288]GB.260/6/6.

[289]*ILO Official Bulletin*, vol. LXXVII, Series B, No. 1.

[290]Ibid., Vol. LXXVII, 1994, Series B, No. 2.

[291]Ibid., Vol. LXXVII, 1994, Series B, No. 3.

[292]United Nations, *Treaty Series*, vol. 14, p. 185.

[293]For details on the establishment of the Inspection Panel, see *Juridical Yearbook, 1993*, p. __

[294]United Kingdom, *Treaty Series*, 47 (1989); *International Legal Materials*, vol. XXIV, No. 6 (November 1985), p. 1605.

[295]United Nations, *Treaty Series*, vol. 575. p. 159.

[296]The quota payments are made in either the special drawing rights, or freely usable currencies (which consist of the United States dollar, the Deutsche mark, the Japanese yen, the French franc, and the pound sterling) and the remainder in the member's local currency.

[297]For detailed information regarding the Third Amendment of the Articles of Agreement, see the *Report of the Executive Board to the Board of Governors on the Proposed*

Third Amendment of the Articles of Agreement of the International Monetary Fund (Washington, International Monetary Fund, 1990).

[298]Decision No. 1018-(92/132) (adopted 3 November 1992).

[299]Summing Up by the Acting Chairman — Modalities of Fund Support for Debt and Debt-Service Reduction, Executive Board Meeting 94/1, 7 January 1994, *Selected Decisions, Twentieth Edition* (Washington, International Monetary Fund, 1995), pp. 133-35.

[300]EBD No. 9331-(89/167), adopted 19 December 1989, as amended, *Selected Decisions: Twentieth Edition* (Washington, International Monetary Fund, 1995), pp. 127-132.

[301]Board of Governors' Resolution No. 45-2 (June 28, 1990), *Selected Decisions: Twentieth Edition* (Washington, International Monetary Fund, 1995), p. 516.

[302]Agreement for Establishment of the Joint Vienna Institute, *Selected Decisions: Twentieth Edition* (Washington, International Monetary Fund, 1995), p. 573.

[303]*International Legal Materials*, vol. XXIII (1984), p. 705.

[304]*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).

[305] United Nations, *Treaty Series*, vol. 15, p. 295.

[306]United Nations registration No. 31251, 1 October 1994.

[307]*International Legal Materials*, vol. XI (1972). p. 1294.

[308]Ibid., vol. XVI (1977), p. 606.

[309]LEG/CONF.8/10.

[310]*International Legal Materials*, vol. XIV (1975), p. 945.

[311]United Nations, *Treaty Series*, vol. 973, p. 3.

[312]MO/SFV-P/CONF.3. (draft).

[313]IMO/SFV/CONF/8 and Corr.1.

[314]Ibid., vol. XVI (1977), p. 621.

[315]United Kingdom, *Treaty Series*, vol. 95 (1978), Cmnd. 7383.

[316]As at 1 April 1994, one objection had been communicated from the United Kingdom of Great Britain and Northern Ireland.

[317]One Contracting State, Egypt, communicated a reservation that the date of application will be 1 October 1995.

[318]With respect to LC.49(16) (industrial wastes) two such declarations (Argentina, Australia) were received and with respect to LC.51(16) (radioactive wastes) one such declaration (Russian Federation) was received.

[319]See chapter IV, B of this *Yearbook*.

[320]United Nations, *Treaty Series*, vol. 828, p. 221.

[321]WIPO publication No. 201(E).

[322]WIPO publication No. 222 (1995).

[323]United Nations, *Treaty Series*, vol. 828, p. 3.

[324]Ibid., p. 389.

[325]League of Nations, *Treaty Series*, vol. xxiv, p. 343.

[326]United Nations, *Treaty Series*, vol. 550, p. 45; vol. 828, p. 191, and vol. 1154, p. 89.

[327]Ibid., vol. 496, p. 43.

[328]Ibid., vol. 828, p. 435.

[329]*United Kingdom Treaty Series*, 78 (1978).

[330]Ibid., 113 (1975).

[331]United Nations, *Treaty Series*, vol. 866, p. 67.

[332]Ibid., vol. 1144, p. 3.
[333]*International Legal Materials*, vol. 17, p. 285.
[334]WIPO publication No. 297.
[335]WIPO publication No. 299(E), 1993.
[336]IDB.12/10 and IDB.14/7, GC.1/INF.6.
[337]GC.1/INF.6.
[338]IDB.9/Dec. 18 and IDB.11/Dec. 35 (reflected in GC.6/16).
[339]Annual Report of UNIDO 1994 (IBD.14/10/Add.1, PBC.11/10/Add.1), appendix H.
[340]INFCIRC/9/Rev.2.
[341]INFCIRC/274/Rev.1.
[342]INFCIRC/335.
[343]INFCIRC/336.
[344]United Nations, *Treaty Series*, vol. 1063, p. 265.
[345]INFCIRC/402.
[346]INFCIRC/377.
[347]INFCIRC/167/Add.15.
[348]See chap. IV.B of the present *Yearbook*.
[349]United Nations, *Treaty Series*, vol. 729, p. 161.
[350]INFCIRC/433, and Mod.1.
[351]INFCIRC/456.
[352]INFCIRC/460 (Colombia) and INFCIRC/468 (Ghana).
[353]INFCIRC/455.
[354]INFCIRC/204.
[355]Two Safeguards Agreements are also in force with Taiwan Province of China.
[356]United Nations, Treaty Series, vol. 634, p. 281.

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. AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION.[1] DONE AT MARRAKECH ON 15 APRIL 1994[2]

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations,

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system,

Agree as follows:

Article I

Establishment of the Organization

The World Trade Organization (hereinafter referred to as "the WTO") is hereby established.

Article II

SCOPE OF THE WTO

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its members in matters related to the agreements and associated legal instruments included in the annexes to this Agreement.

2. The agreements and associated legal instruments included in annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all members.

3. The agreements and associated legal instruments included in annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those members that have accepted them, and are binding on those members. The Plurilateral Trade Agreements do not create either obligations or rights for members that have not accepted them.

4. The General Agreement on Tariffs and Trade 1994 as specified in annex 1A (hereinafter referred to as "GATT 1994") is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as "GATT 1947").

Article III

FUNCTIONS OF THE WTO

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

2. The WTO shall provide the forum for negotiations among its members concerning their multilateral trade relations in matters dealt with under the agreements in the annexes to this agreement. The WTO may also provide a forum for further negotiations among its members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.

3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in annex 2 to this Agreement.

4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in annex 3 to this Agreement.

5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

Article IV

STRUCTURE OF THE WTO

1. There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7.

3. The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfillment of those responsibilities.

4. The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfillment of those responsibilities.

5. There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPS shall oversee the functioning of the Agreement on Trade-related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS"). These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all members. These Councils shall meet as necessary to carry out their functions.

6. The Council for Trade in Goods, the Council for Trade in Services and the Council for TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective Councils.

7. The Ministerial Conference shall establish a Committee on Trade and Development, a Committee on Balance-of-Payments Restrictions and a Committee on Budget, Finance and Administration, which shall carry out the functions assigned to them by this Agreement and by the Multilateral Trade Agreements, and any additional functions assigned to them by the General Council, and may establish such additional Committees with such functions as it may deem appropriate. As part of it

s functions, the Committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the least-developed country members and report to the General Council for appropriate action. Membership in these Committees shall be open to representatives of all Members.

8. The bodies provided for under the Plurilateral Trade Agreements shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Article V

Relations with other organizations

1. The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.

2. The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

Article VI

The Secretariat

1. There shall be a Secretariat of the WTO (hereinafter referred to as "the Secretariat") headed by a Director-General.

2. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and term of office of the Director-General.

3. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.

4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

Article VII

Budget and contributions

1. The Director-General shall present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO. The Committee on Budget, Finance and Administration shall review the annual budget estimate and the financial statement presented by the Director-General and make recommendations thereon to the General Council. The annual budget estimate shall be subject to approval by the General Council.

2. The Committee on Budget, Finance and Administration shall propose to the General Council financial regulations which shall include provisions setting out:

(*a*) The scale of contributions apportioning the expenses of the WTO among its members; and

(*b*) The measures to be taken in respect of Members in arrears.

The financial regulations shall be based, as far as practicable, on the regulations and practices of GATT 1947.

3. The General Council shall adopt the financial regulations and the annual budget estimate by a two-thirds majority comprising more than half of the Members of the WTO.

4. Each Member shall promptly contribute to the WTO its share in the expenses of the WTO in accordance with financial regulations adopted by the General Council.

Article VIII

STATUS OF THE WTO

1. The WTO shall have legal personality and shall be accorded by each of its members such legal capacity as may be necessary for the exercise of its functions.

2. The WTO shall be accorded by each of it members such privileges and immunities as are necessary for the exercise of its functions.

3. The officials of the WTO and the representatives of the members shall similarly be accorded by each of its members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.

4. The privileges and immunities to be accorded by a Member to the WTO, its officials and the representatives of its members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

5. The WTO may conclude a headquarters agreement.

Article IX

DECISION-MAKING

1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.* Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States**

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* The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.

** The number of votes of the European Communities and their member States shall in no case exceed the number of the member States of the European Communities.

which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.[* **]

2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in article X.

3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths of the members unless otherwise provided for in this paragraph.

(*a*) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths[* ***] of the members.

(*b*) A request for a waiver concerning the Multilateral Trade Agreements in annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time period which shall not exceed 90 days. At the end of the time period, the relevant Council shall submit a report to the Ministerial Conference.

4. A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.

5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of the Agreement.

*** Decisions by the General Council when convened as the Dispute Settlement Body shall be taken only in accordance with the provisions of paragraph 4 of article 2 of the Dispute Settlement Understanding.

**** A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting Member has not performed by the end of the relevant period shall be taken only by consensus.

Article X

AMENDMENTS

1. Any member of the WTO may initiate a proposal to amend the provisions of this Agreement or the Multilateral Trade Agreements in annex 1 by submitting such proposal to the Ministerial Conference. The Councils listed in paragraph 5 of article IV may also submit to the Ministerial Conference proposals to amend the provisions of the corresponding Multilateral Trade Agreements in annex 1 the functioning of which they oversee. Unless the Ministerial Conference decides on a longer period, for a period of 90 days after the proposal has been tabled formally at the Ministerial Conference any decision by the Ministerial Conference to submit the proposed amendment to the Members for acceptance shall be taken by consensus. Unless the provisions of paragraphs 2, 5 or 6 apply, that decision shall specify whether the provisions of paragraphs 3 or 4 shall apply. If consensus is reached, the Ministerial Conference shall forthwith submit the proposed amendment to the Members for acceptance. If consensus is not reached at a meeting of the Ministerial Conference within the established period, the Ministerial Conference shall decide by a two-thirds majority of the members whether to submit the proposed amendment to the Members for acceptance. Except as provided in paragraphs 2, 5 and 6, the provisions of paragraph 3 shall apply to the proposed amendment, unless the Ministerial Conference decides by a three-fourths majority of the members that the provisions of paragraph 4 shall apply.

2. Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all members:

Article IX of this Agreement;

Articles I and II of GATT 1994;

Article II:1 of GATS;

Article 4 of the Agreement on TRIPS.

3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the members, shall take effect for the members that have accepted them upon acceptance by two thirds of the members and thereafter for each other member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a member with the consent of the Ministerial Conference.

4. Amendments to provisions of this Agreement or of the Multilateral Trade Agreements in annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would not alter the rights and obligations of the members, shall take effect for all members upon acceptance by two thirds of the members.

5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the members that have accepted them upon acceptance by two thirds of the members and thereafter for each member upon acceptance by it. The Ministerial Conference may decide by a three-fourths

majority of the members that any amendment made effective under the preceding provision is of such a nature that any member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a member with the consent of the Ministerial Conference. Amendments to Parts IV, V and VI of GATS and the respective annexes shall take effect for all members upon acceptance by two thirds of the members.

6. Notwithstanding the other provisions of this article, amendments to the Agreement on TRIPS meeting the requirements of paragraph 2 of article 71 thereof may be adopted by the Ministerial Conference without further formal acceptance process.

7. Any member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in annex 1 shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference.

8. Any Member of the WTO may initiate a proposal to amend the provisions of the Multilateral Trade Agreements in annexes 2 and 3 by submitting such proposal to the Ministerial Conference. The decision to approve amendments to the Multilateral Trade Agreement in annex 2 shall be made by consensus and these amendments shall take effect for all members upon approval by the Ministerial Conference. Decisions to approve amendments to the Multilateral Trade Agreement in annex 3 shall take effect for all members upon approval by the Ministerial Conference.

9. The Ministerial Conference, upon the request of the members parties to a trade agreement, may decide exclusively by consensus to add that agreement to annex 4. The Ministerial Conference, upon the request of the members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from annex 4.

10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XI

Original membership

1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original Members of the WTO.

2. The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capacities.

Article XII

Accession

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the members of the WTO.

3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that agreement.

Article XIII

Non-application of multilateral trade agreements between particular members

1. This Agreement and the Multilateral Trade Agreements in annexes 1 and 2 shall not apply as between any member and any other member if either of the members, at the time either becomes a member, does not consent to such application.

2. Paragraph 1 may be invoked between original members of the WTO which were contracting parties to GATT 1947 only where article XXXV of that Agreement had been invoked earlier and was effective as between those contracting parties at the time of entry into force for them of this Agreement.

3. Paragraph 1 shall apply between a member and another member which has acceded under article XII only if the member not consenting to the application has so notified the Ministerial Conference before the approval of the agreement on the terms of accession by the Ministerial Conference.

4. The Ministerial Conference may review the operation of this article in particular cases at the request of any member and make appropriate recommendations.

5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

Article XIV

Acceptance, entry into force and deposit

1. This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to GATT 1947, and the European Communities, which are eligible to become original members of the WTO in accordance with article XI of this Agreement. Such acceptance shall apply to this Agreement and the Multilateral Trade Agreements annexed hereto. This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise. An acceptance following the entry into force of this Agreement shall enter into force on the thirtieth day following the date of such acceptance.

2. A member which accepts this Agreement after its entry into force shall implement those concessions and obligations in the Multilateral Trade Agreements that are to be implemented over a period of time starting with the entry into force of this Agreement as if it had accepted this Agreement on the date of its entry into force.

3. Until the entry into force of this Agreement, the text of this Agreement and the Multilateral Trade Agreements shall be deposited with the Director-General to the contracting parties to GATT 1947. The Director-General shall promptly furnish a certified true copy of this Agreement and the Multilateral Trade Agreements, and

a notification of each acceptance thereof, to each Government and the European Communities having accepted this Agreement. This Agreement and the Multilateral Trade Agreements, and any amendments thereto, shall, upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.

4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the contracting parties to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.

Article XV

Withdrawal

1. Any member may withdraw from this Agreement. Such withdrawal shall apply both to this Agreement and the Multilateral Trade Agreements and shall take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO.

2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XVI

Miscellaneous provisions

1. Except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the contracting parties to GATT 1947 and the bodies established in the framework of GATT 1947.

2. To the extent practicable, the Secretariat of GATT 1947 shall become the Secretariat of the WTO, and the Director-General to the contracting parties to GATT 1947, until such time as the Ministerial Conference has appointed a Director-General in accordance with paragraph 2 of article VI of this Agreement, shall serve as Director-General of the WTO.

3. In the event of a conflict between a provision of this Agreement and a provision of any of the Multilateral Trade Agreements, the provision of this Agreement shall prevail to the extent of the conflict.

4. Each member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

5. No reservations may be made in respect of any provision of this Agreement. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

6. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Marrakech this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic.

EXPLANATORY NOTES:

The terms "country" or "countries" as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO.

In the case of a separate customs territory member of the WTO, where an expression in this Agreement and the Multilateral Trade Agreements is qualified by the term "national," such expression shall be read as pertaining to that customs territory, unless otherwise specified.

2. AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA[3] OF 10 DECEMBER 1982. DONE AT NEW YORK ON 28 JULY 1994[4]

The States Parties to this Agreement,

Recognizing the important contribution of the United Nations Convention on the Law of the Sea of 10 December 1982[5] (hereinafter referred to as "the Convention") to the maintenance of peace, justice and progress for all peoples of the world,

Reaffirming that the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as "the Area"), as well as the resources of the Area, are the common heritage of mankind,

Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment,

Having considered the report of the Secretary-General of the United Nations on the results of the informal consultations among States held from 1990 to 1994 on outstanding issues relating to Part XI and related provisions of the Convention (hereinafter referred to as "Part XI"),

Noting the political and economic changes, including market-oriented approaches, affecting the implementation of Part XI,

Wishing to facilitate universal participation in the Convention,

Considering that an agreement relating to the implementation of Part XI would best meet that objective,

Have agreed as follows:

Article 1

IMPLEMENTATION OF PART XI

1. The States Parties to this Agreement undertake to implement Part XI in accordance with this Agreement.

2. The Annex forms an integral part of this Agreement.

Article 2

RELATIONSHIP BETWEEN THIS AGREEMENT AND PART XI

1. The provisions of this Agreement and Part XI shall be interpreted and applied together as a single instrument. In the event of any inconsistency between this Agreement and Part XI, the provisions of this Agreement shall prevail.

2. Articles 309 to 319 of the Convention shall apply to this Agreement as they apply to the Convention.

Article 3

SIGNATURE

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1(a), (c), (d), (e), and (f), of the Convention for 12 months from the date of its adoption.

Article 4

CONSENT TO BE BOUND

1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.

2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.

3. A State or entity referred to in article 3 may express its consent to be bound by this Agreement by:

(*a*) Signature not subject to ratification, formal confirmation or the procedure set out in article 5;

(*b*) Signature subject to ratification or formal confirmation, followed by ratification or formal confirmation;

(*c*) Signature subject to the procedure set out in article 5; or

(*d*) Accession.

4. Formal confirmation by the entities referred to in article 305, paragraph 1(f), of the Convention shall be in accordance with Annex IX of the Convention.

5 The instruments of ratification, formal confirmation or accession shall be deposited with the Secretary-General of the United Nations.

Article 5

SIMPLIFIED PROCEDURE

1. A State or entity which has deposited before the date of the adoption of this Agreement an instrument of ratification or formal confirmation of or accession to the Convention and which has signed this Agreement in accordance with article 4, paragraph 3(c), shall be considered to have established its consent to be bound by this Agreement 12 months after the date of its adoption, unless that State or entity notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this article.

2. In the event of such notification, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3(b).

Article 6

ENTRY INTO FORCE

1. This Agreement shall enter into force 30 days after the date on which 40 States have established their consent to be bound in accordance with articles 4 and 5, provided that such States include at least seven of the States referred to in paragraph 1(a) of resolution II of the Third United Nations Conference on the Law of the Sea[6] (hereinafter referred to as "resolution II") and that at least five of those States are developed States. If these conditions for entry into force are fulfilled before 16 November 1994, this Agreement shall enter into force on 16 November 1994.

2. For each State or entity establishing its consent to be bound by this Agreement after the requirements set out in paragraph 1 have been fulfilled, this Agreement shall enter into force on the thirtieth day following the date of establishment of its consent to be bound.

Article 7

PROVISIONAL APPLICATION

1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:

(*a*) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;

(*b*) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;

(*c*) States and entities which consent to its provisional application by so notifying the depositary in writing;

(*d*) States which accede to this Agreement.

2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.

3. Provisional application shall terminate upon the date of entry into force of this Agreement. In any event, provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven of the States (of which at least five must be developed States) referred to in paragraph 1(a) of resolution II has not been fulfilled.

Article 8

STATES PARTIES

1. For the purposes of this Agreement, "States Parties" means States which have consented to be bound by this Agreement and for which this Agreement is in force.

2. This Agreement applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(c), (d), (e) and (f), of the Convention which become Parties to this Agreement in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

Article 9

DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 10

AUTHENTIC TEXTS

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

DONE AT NEW YORK, this … day of July, one thousand nine hundred and ninety-four.

ANNEX

Section 1. Costs to States Parties and Institutional Arrangements

1. The International Seabed Authority (hereinafter referred to as "the Authority") is the organization through which States Parties to the Convention shall, in accordance with the regime for the Area established in Part XI and this Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area. The powers and functions of the Authority shall be those expressly conferred upon it by the Convention. The Authority shall have such incidental powers, consistent with the Convention, as are implicit in, and necessary for, the exercise of those power and functions with respect to activities in the Area.

2. In order to minimize costs to State Parties, all organs and subsidiary bodies to be established under the Convention and this Agreement shall be cost-effective. This principle shall also apply to the frequency, duration and scheduling of meetings.

3. The setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach, taking into account the functional needs of the organs and subsidiary bodies concerned in order that they may discharge effectively their respective responsibilities at various stages of the development of activities in the Area.

4. The early functions of the Authority upon entry into force of the Convention shall be carried out by the Assembly, the Council, the Secretariat, the Legal and Technical Commission and the Finance Committee. The functions of the Economic Planning Commission shall be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation.

5. Between the entry into force of the Convention and the approval of the first plan of work for exploitation, the Authority shall concentrate on:

(*a*) Processing of applications for approval of plans of work for exploration in accordance with Part XI and this Agreement;

(*b*) Implementation of decisions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (hereinafter referred to as "the Preparatory Commission") relating to the registered pioneer investors and their certifying States, including their rights and obligations, in accordance with article 308, paragraph 5, of the Convention and resolution II, paragraph 13;

(*c*) Monitoring of compliance with plans of work for exploration approved in the form of contracts;

(*d*) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;

(*e*) Study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those mineral which are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission;

(*f*) Adoption of rules, regulations and procedures necessary for the conduct of activities in the Area as they progress. Notwithstanding the provisions of Annex III, article 17, paragraph 2(b) and (c), of the Convention, such rules, regulations and procedures shall take into account the terms of this Agreement, the prolonged delay in commercial deep seabed mining and the likely pace of activities in the Area;

(*g*) Adoption of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment;

(*h*) Promotion and encouragement of the conduct of marine scientific research with respect to activities in the Area and the collection and dissemination of the results of such research and analysis, when available, with particular emphasis on research related to the environmental impact of activities in the Area;

(*i*) Acquisition of scientific knowledge and monitoring of the development of marine technology relevant to the activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(*j*) Assessment of available data relating to prospecting and exploration;

(*k*) Timely elaboration of rules, regulations and procedures for exploitation, including those relating to the protection and preservation of the marine environment.

6. (a) An application for approval of a plan of work for exploration shall be considered by the Council following the receipt of a recommendation on the application from the Legal and Technical Commission. The processing of an application for approval of a plan of work for exploration shall be in accordance with the provisions of the Convention, including Annex III thereof, and this Agreement, and subject to the following:

(i) A plan of work for exploration submitted on behalf of a State or entity, or any component of such entity, referred to in resolution II, paragraph 1(a) (ii) or (iii), other than a registered pioneer investor, which had already undertaken substantial activities in the Area prior to the entry into force of the Convention, or its successor in interest, shall be considered to have met the financial and technical qualifications necessary for approval of a plan of work if the sponsoring State or States certify that the applicant has expended an amount equivalent to at least US$ 30 million in research and exploration activities and has expended no less than 10 per cent of that amount in the location, survey and evaluation of

the area referred to in the plan of work. If the plan of work otherwise satisfies the requirements of the Convention and any rules, regulations and procedures adopted pursuant thereto, it shall be approved by the Council in the form of a contract. The provisions of section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(ii) Notwithstanding the provisions of resolution II, paragraph 8(a), a registered pioneer investor may request approval of a plan of work for exploration within 36 months of the entry into force of the Convention. The plan of work for exploration shall consist of documents, reports and other data submitted to the Preparatory Commission both before and after registration and shall be accompanied by a certificate of compliance, consisting of a factual report describing the status of fulfilment of obligations under the pioneer investor regime, issued by the Preparatory Commission in accordance with resolution II, paragraph 11(a). Such a plan of work shall be considered to be approved. Such an approved plan of work shall be in the form of a contract concluded between the Authority and the registered pioneer investor in accordance with Part XI and this Agreement. The fee of US$ 250,000 paid pursuant to resolution II, paragraph 7(a), shall be deemed to be the fee relating to the exploration phase pursuant to section 8, paragraph 3, of this Annex. Section 3, paragraph 11, of this Annex shall be interpreted and applied accordingly;

(iii) In accordance with the principle of non-discrimination, a contract with a State or entity or any component of such entity referred to in subparagraph (a) (i) shall include arrangements which shall be similar to and no less favourable than those agreed with any registered pioneer investor referred to in subparagraph (a) (ii). If any of the States or entities or any components of such entities referred to in subparagraph (a) (i) are granted more favourable arrangements, the Council shall make similar and no less favourable arrangements with regard to the rights and obligations assumed by the registered pioneer investors referred to in subparagraph (a) (ii), provided that such arrangements do not affect or prejudice the interests of the Authority;

(iv) A State sponsoring an application for a plan of work pursuant to the provisions of subparagraph (a) (i) or (ii) may be a State Party or a State which is applying this Agreement provisionally in accordance with article 7, or a State which is a member of the Authority on a provisional basis in accordance with paragraph 12;

(v) Resolution II, paragraph 8(c), shall be interpreted and applied in accordance with subparagraph (a) (iv).

(*b*) The approval of a plan of work for exploration shall be in accordance with article 153, paragraph 3, of the Convention.

7. An application for approval of a plan of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and by a description of a programme for oceanographic and baseline environmental studies in accordance with the rules, regulations and procedures adopted by the Authority.

8. An application for approval of a plan of work for exploration, subject to paragraph 6(a) (i) or (ii), shall be processed in accordance with the procedures set out in section 3, paragraph 11, of this Annex.

9. A plan of work for exploration shall be approved for a period of 15 years. Upon the expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so or has obtained an extension for the plan of work for exploration. Contractors may apply for such extensions for periods of not more than five years each. Such extensions shall be approved if the contractor has made

efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

10. Designation of a reserved area for the Authority in accordance with Annex III, article 8, of the Convention shall take place in connection with approval of an application for a plan of work for exploration or approval of an application for a plan of work for exploration and exploitation.

11. Notwithstanding the provisions of paragraph 9, an approved plan of work for exploration which is sponsored by at least one State provisionally applying this Agreement shall terminate if such a State ceases to apply this Agreement provisionally and has not become a member on a provisional basis in accordance with paragraph 12 or has not become a State Party.

12. Upon the entry into force of this Agreement, States and entities referred to in article 3 of this Agreement which have been applying it provisionally in accordance with article 7 and for which it is not in force may continue to be members of the Authority on a provisional basis pending it s entry into force for such States and entities, in accordance with the following subparagraphs:

(*a*) If this Agreement enters into force before 16 November 1996, such States and entities shall be entitled to continue to participate as members of the Authority on a provisional basis upon notification to the depositary of the Agreement by such a State or entity of its intention to participate as a member on a provisional basis. Such membership shall terminate either on 16 November 1996 or upon the entry into force of this Agreement and the Convention for such member, whichever is earlier. The Council may, upon the request of the State or entity concerned, extend such membership beyond 16 November 1996 for a further period or periods not exceeding a total of two years provided that the Council is satisfied that the State or entity concerned has been making efforts in good faith to become a party to the Agreement and the Convention;

(*b*) If this Agreement enters into force after 15 November 1996, such States and entities may request the Council to grant continued membership in the Authority on a provisional basis for a period or periods not extending beyond 16 November 1998. The Council shall grant such membership with effect from the date of the request if it is satisfied that the State or entity has been making efforts in good faith to become a party to the Agreement and the Convention;

(*c*) States and entities which are members of the Authority on a provisional basis in accordance with subparagraph (a) or (b) shall apply the terms of Part XI and this Agreement in accordance with their national or internal laws, regulations and annual budgetary appropriations and shall have the same rights and obligations as other members, including:

(i) The obligation to contribute to the administrative budget of the Authority in accordance with the scale of assessed contributions;

(ii) The right to sponsor an application for approval of a plan of work for exploration. In the case of entities whose components are natural or juridical persons possessing the nationality of more than one State, a plan of work for exploration shall not be approved unless all the States whose natural or juridical persons comprise those entities are States Parties or members on a provisional basis;

(*d*) Notwithstanding the provisions of paragraph 9, an approved plan of work in the form of a contract for exploration which was sponsored pursuant to subparagraph (c) (ii) by a State which was a member on a provisional basis shall terminate if such membership ceases and the State or entity has not become a State Party;

(*e*) If such a member has failed to make its assessed contributions or otherwise failed to comply with its obligations in accordance with this paragraph, its membership on a provisional basis shall be terminated.

13. The reference in Annex III, article 10, of the Convention to performance which has not been satisfactory shall be interpreted to mean that the contractor has failed to comply with the requirements of an approved plan of work in spite of a written warning or warnings from the Authority to the contractor to comply therewith.

14. The Authority shall have its own budget. Until the end of the year following the year during which this Agreement enters into force, the administrative expenses of the Authority shall be met through the budget of the United Nations. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members, including any members on a provisional basis, in accordance with articles 171, subparagraph (a), and 173 of the Convention and this Agreement, until the Authority has sufficient funds from other sources to meet those expenses. The Authority shall not exercise the power referred to in article 174, paragraph 1, of the Convention to borrow funds to finance its administrative budget.

15. The Authority shall elaborate and adopt, in accordance with article 162, paragraph 2(o) (ii), of the Convention, rules, regulations and procedures based on the principles contained in sections 2, 5, 6, 7 and 8 of this Annex, as well as any additional rules, regulations and procedures necessary to facilitate the approval of plans of work for exploration or exploitation, in accordance with the following subparagraphs:

(*a*) The Council may undertake such elaboration any time it deems that all or any of such rules, regulations or procedures are required for the conduct of activities in the Area, or when it determines that commercial exploitation is imminent, or at the request of a State whose national intends to apply for approval of a plan of work for exploitation;

(*b*) If a request is made by a State referred to in subparagraph (a) the Council shall, in accordance with article 162, paragraph 2(o), of the Convention, complete the adoption of such rules, regulations and procedures within two years of the request;

(*c*) If the Council has not completed the elaboration of the rules, regulations and procedures relating to exploitation within the prescribed time and an application for approval of a plan of work for exploitation is pending, it shall none the less consider and provisionally approve such plan of work based on the provisions of the Convention and any rules, regulations and procedures that the Council may have adopted provisionally, or on the basis of the norms contained in the Convention and the terms and principles contained in this Annex as well as the principle of non-discrimination among contractors.

16. The draft rules, regulations and procedures and any recommendations relating to the provisions of Part XI, as contained in the reports and recommendations of the Preparatory Commission, shall be taken into account by the Authority in the adoption of rules, regulations and procedures in accordance with Part XI and this Agreement.

17. The relevant provisions of Part XI, section 4, of the Convention shall be interpreted and applied in accordance with this Agreement.

Section 2. The Enterprise

1. The Secretariat of the Authority shall perform the functions of the Enterprise until it begins to operate independently of the Secretariat. The Secretary-General of the Authority shall appoint from within the staff of the Authority an interim Director-General to oversee the performance of these functions by the Secretariat.

These functions shall be:

(*a*) Monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects;

(*b*) Assessment of the results of the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental impact of activities in the Area;

(*c*) Assessment of available data relating to prospecting and exploration, including the criteria for such activities;

(*d*) Assessment of technological developments relevant to activities in the Area, in particular technology relating to the protection and preservation of the marine environment;

(*e*) Evaluation of information and data relating to areas reserved for the Authority;

(*f*) Assessment of approaches to joint-venture operations;

(*g*) Collection of information on the availability of trained manpower;

(*h*) Study of managerial policy options for the administration of the Enterprise at different stages of its operations.

2. The Enterprise shall conduct its initial deep seabed mining operations through joint ventures. Upon the approval of a plan of work for exploitation for an entity other than the Enterprise, or upon receipt by the Council of an application for a joint-venture operation with the Enterprise, the Council shall take up the issue of the functioning of the Enterprise independently of the Secretariat of the Authority. If joint-venture operations with the Enterprise accord with sound commercial principles, the Council shall issue a directive pursuant to article 170, paragraph 2, of the Convention providing for such independent functioning.

3. The obligations of States Parties to fund one mine site of the Enterprise as provided for in Annex IV, article 11, paragraph 3, of the Convention shall not apply and States Parties shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint-venture arrangements.

4. The obligations applicable to contractors shall apply to the Enterprise. Notwithstanding the provisions of article 153, paragraph 3, and Annex III, article 3, paragraph 5, of the Convention, a plan of work for the Enterprise upon its approval shall be in the form of a contract concluded between the Authority and the Enterprise.

5. A contractor which has contributed a particular area to the Authority as a reserved area has the right of first refusal to enter into a joint-venture arrangement with the Enterprise for exploration and exploitation of that area. If the Enterprise does not submit an application for a plan of work for activities in respect of such a reserved area within 15 years of the commencement of its functions independent of the Secretariat of the Authority or within 15 years of the date on which that area is reserved for the Authority, whichever is the later, the contractor which contributed the area shall be entitled to apply for a plan of work for that area provided it offers in good faith to include the Enterprise as a joint-venture partner.

6. Article 170, paragraph 4, Annex IV and other provisions of the Convention relating to the Enterprise shall be interpreted and applied in accordance with this section.

Section 3. Decision-making

1. The general policies of the Authority shall be established by the Assembly in collaboration with the Council.

2. As a general rule, decision-making in the organs of the Authority should be by consensus.

3. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Assembly on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance shall be taken by a two-thirds majority of members present and voting, as provided for in article 159, paragraph 8, of the Convention.

4. Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly.

5. If all efforts to reach a decision by consensus have been exhausted, decisions by voting in the Council on questions of procedure shall be taken by a majority of members present and voting, and decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers referred to in paragraph 9. In taking decisions the Council shall seek to promote the interests of all the members of the Authority.

6. The Council may defer the taking of a decision in order to facilitate further negotiation whenever it appears that all efforts at achieving consensus on a question have not been exhausted.

7. Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

8. The provisions of article 161, paragraph 8(b) and (c), of the Convention shall not apply.

9. (*a*) Each group of States elected under paragraph 15(a) to (c) shall be treated as a chamber for the purposes of voting in the Council. The developing States elected under paragraph 15 (d) and (e) shall be treated as a single chamber for the purposes of voting in the Council.

(*b*) Before electing the members of the Council, the Assembly shall establish lists of countries fulfilling the criteria for membership in the groups of States in paragraph 15 (a) to (d). If a State fulfills the criteria for membership in more than one group, it may only be proposed by one group for election to the Council and it shall represent only that group in voting in the Council.

10. Each group of States in paragraph 15(a) to (d) shall be represented in the Council by those members nominated by that group. Each group shall nominate only as many candidates as the number of seats required to be filled by that group. When the number of potential candidates in each of the groups referred to in paragraph 15(a) to (e) exceeds the number of seats available in each of those respective groups, as a general rule, the principle of rotation shall apply. State members of each of those groups shall determine how this principle shall apply in those groups.

11. (*a*) The Council shall approve a recommendation by the Legal and Technical Commission for approval of a plan of work unless by a two-thirds majority of its members present and voting, including a majority of members present and voting in each of the chambers of the Council, the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed period, the recommendation shall be deemed to have been approved by the Council at the end of that period. The prescribed period shall normally be 60 days unless the Council decides to provide for a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.

(*b*) The provisions of article 162, paragraph (j), of the Convention shall not apply.

12. Where a dispute arises relating to the disapproval of a plan of work, such dispute shall be submitted to the dispute settlement procedures set out in the Convention.

13. Decisions by voting in the Legal and Technical Commission shall be by a majority of members present and voting.

14. Part XI, section 4, subsections B and C, of the Convention shall be interpreted and applied in accordance with this section.

15. The Council shall consist of 36 members of the Authority elected by the Assembly in the following order:

(*a*) Four members from among those States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total world imports of the commodities produced from the categories of minerals to be derived from the Area, provided that the four members shall include one State from the Eastern European region having the largest economy in that region in terms of gross domestic product and the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;

(*b*) Four members from among the eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals;

(*c*) Four members from among States Parties which, on the basis of production in areas under their jurisdiction, are major net exporters of the categories of minerals to be derived from the Area, including at least two developing States whose exports of such minerals have a substantial bearing upon their economies;

(*d*) Six members from among developing States Parties, representing special interests. The special interests to be represented shall include those of States with large populations, States which are land-locked or geographically disadvantaged, island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States;

(*e*) Eighteen members elected according to the principle of ensuring an equitable geographical distribution of seats in the Council as a whole, provided that each geographical region shall have at least one member elected under this subparagraph. For this purpose, the geographical regions shall be Africa, Asia, Eastern Europe, Latin America and the Caribbean and Western Europe and Others.

16. The provisions of article 161, paragraph 1, of the Convention shall not apply.

Section 4. Review Conference

The provisions relating to the Review Conference in article 155, paragraphs 1, 3 and 4, of the Convention shall not apply. Notwithstanding the provisions of article 314, paragraph 2, of the Convention, the Assembly, on the recommendation of the Council, may undertake at any time a review of the matters referred to in article 155, paragraph 1, of the Convention. Amendments relating to this Agreement and Part XI shall be subject to the procedures contained in articles 314, 315 and 316 of the Convention, provided that the principles, regime and other terms referred to in article 155, paragraph 2, of the Convention shall be maintained and the rights referred to in paragraph 5 of that article shall not be affected.

Section 5. Transfer of Technology

1. In addition to the provisions of article 144 of the Convention, transfer of technology for the purposes of Part XI shall be governed by the following principles:

(*a*) The Enterprise, and developing States wishing to obtain deep seabed mining technology, shall seek to obtain such technology on fair and reasonable commercial terms and conditions on the open market, or through joint-venture arrangements;

(*b*) If the Enterprise or developing States are unable to obtain deep seabed mining technology, the Authority may request all or any of the contractors and their respective

sponsoring State or States to cooperate with it in facilitating the acquisition of deep seabed mining technology by the Enterprise or its joint venture, or by a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority.

(*c*) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes in marine science and technology and the protection and preservation of the marine environment.

2. The provisions of Annex III, article 5, of the Convention shall not apply.

Section 6. Production Policy

1. The production policy of the Authority shall be based on the following principles:

(*a*) Development of the resources of the Area shall take place in accordance with sound commercial principles;

(*b*) The provisions of the General Agreement on Tariffs and Trade, its relevant codes and successor or superseding agreements shall apply with respect to activities in the Area;

(*c*) In particular, there shall be no subsidization of activities in the Area except as may be permitted under the agreements referred to in subparagraph (b). Subsidization for the purpose of these principles shall be defined in terms of the agreements referred to in subparagraph (b);

(*d*) There shall be no discrimination between minerals derived from the Area and from other sources. There shall be no preferential access to markets for such mineral or for imports of commodities produced from such minerals, in particular:

(i) By the use of tariff or non-tariff barriers; and

(ii) Given by States Parties to such minerals or commodities produced by their state enterprises or by natural or juridical persons which possess their nationality or are controlled by them or their nationals;

(*e*) The plan of work for exploitation approved by the Authority in respect of each mining area shall indicate an anticipated production schedule which shall include the estimated maximum amounts of minerals that would be produced per year under the plan of work;

(*f*) The following shall apply to the settlement of disputes concerning the provisions of the agreements referred to in subparagraph (*b*):

(i) Where the States Parties concerned are parties to such agreements, they shall have recourse to the dispute settlement procedures of those agreements;

(ii) Where one or more of the States Parties concerned are not parties to such agreements, they shall have recourse to the dispute settlement procedures set out in the Convention;

(*g*) In circumstances where a determination is made under the agreements referred to in subparagraph (b) that a State Party has engaged in subsidization which is prohibited or has resulted in adverse effects on the interests of another State Party and appropriate

steps have not been taken by the relevant State Party or States Parties, a State Party may request the Council to take appropriate measures.

2. The principles contained in paragraph 1 shall not affect the rights and obligations under any provision of the agreements referred to in paragraph 1(b), as well as the relevant free trade and customs union agreements, in relations between States Parties which are parties to such agreements.

3. The acceptance by a contractor of subsidies other than those which may be permitted under the agreements referred to in paragraph 1(b) shall constitute a violation of the fundamental terms of the contract forming a plan of work for the carrying out of activities in the Area.

4. Any State Party which has reason to believe that there has been a breach of the requirements of paragraphs 1(b) to (d) or 3 may initiate dispute settlement procedures in conformity with paragraph 1(f) or (g).

5. A State Party may at any time bring to the attention of the Council activities which in its view are inconsistent with the requirements of paragraph 1(b) to (d).

6. The Authority shall develop rules, regulations and procedures which ensure the implementation of the provisions of this section, including relevant rules, regulations and procedures governing the approval of plans of work.

7. The provisions of article 151, paragraphs 1 to 7 and 9, article 162, paragraph 2(q), article 165, paragraph 2(n), and Annex III, article 6, paragraph 5, and article 7, of the Convention shall not apply.

Section 7. Economic Assistance

1. The policy of the Authority of assisting developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, shall be based on the following principles:

(*a*) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority which exceeds those necessary to cover the administrative expenses of the Authority. The amount set aside for this purpose shall be determined by the Council from time to time, upon the recommendation of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used for the establishment of the economic assistance fund;

(*b*) Developing land-based producer States whose economies have been determined to be seriously affected by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority;

(*c*) The Authority shall provide assistance from the fund to affected developing land-based producer States, where appropriate, in cooperation with existing global or regional development institutions which have the infrastructure and expertise to carry out such assistance programmes;

(*d*) The extent and period of such assistance shall be determined on a case-by-case basis. In doing so, due consideration shall be given to the nature and magnitude of the problems encountered by affected developing land-based producer States.

2. Article 151, paragraph 10, of the Convention shall be implemented by means of measures of economic assistance referred to in paragraph 1. Article 160, paragraph 2(l), article 162, paragraph 2(n), article 164, paragraph 2(d), article 171, subparagraph (f), and article 173, paragraph 2(c), of the convention shall be interpreted accordingly.

Section 8. Financial Terms of Contracts

1. The following principles shall provide the basis for establishing rules, regulations and procedures for financial terms of contracts:

(*a*) The system of payments to the Authority shall be fair both to the contractor and to the Authority and shall provide adequate means of determining compliance by the contractor with such system;

(*b*) The rates of payments under the system shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage;

(*c*) The system should not be complicated and should not impose major administrative costs on the Authority or on a contractor. Consideration should be given to the adoption of a royalty system or a combination of a royalty and profit-sharing system. If alternative systems are decided upon, the contractor has the right to choose the system applicable to its contract. Any subsequent change in choice between alternative systems, however, shall be made by agreement between the Authority and the contractor;

(*d*) An annual fixed fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in accordance with subparagraph (c). The amount of the fee shall be established by the Council;

(*e*) The system of payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor;

(*f*) Disputes concerning the interpretation or application of the rules and regulations based on these principles shall be subject to the dispute settlement procedures set out in the Convention.

2. The provisions of Annex III, article 13, paragraphs 3 to 10, of the Convention shall not apply.

3. With regard to the implementation of Annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for approval of a plan of work limited to one phase, either the exploration phase or the exploitation phase, shall be US$ 250,000.

Section 9. The Finance Committee

1. There is hereby established a Finance Committee. The Committee shall be composed of 15 members with appropriate qualifications relevant to financial matters. States Parties shall nominate candidates of the highest standards of competence and integrity.

2. No two members of the Finance Committee shall be nationals of the same State Party.

3. Members of the Finance Committee shall be elected by the Assembly and due account shall be taken of the need for equitable geographical distribution and the representation of special interests. Each group of States referred to in section 3, paragraph 15(a), (b), (c) and (d), of this Annex shall be represented on the Committee by at least one member. Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include representatives of the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member

from each group shall be on the basis of nomination by the members of the respective group, without prejudice to the possibility of further members being elected from each group.

4. Members of the Finance Committee shall hold office for a term of five years. They shall be eligible for re-election for a further term.

5. In the event of the death, incapacity or resignation of a member of the Finance Committee prior to the expiration of the term of office, the Assembly shall elect for the remainder of the term a member from the same geographical region or group of States.

6. Members of the Finance Committee shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations. They shall not disclose, even after the termination of their functions, any confidential information coming to their knowledge by reason of their duties for the Authority.

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(*a*) Draft financial rules, regulations and procedures of the organs of the Authority and the financial management and internal financial administration of the Authority;

(*b*) Assessment of contributions of members to the administrative budget of the Authority in accordance with article 160, paragraph 2(e), of the Convention;

(*c*) All relevant financial matters, including the proposed annual budget prepared by the Secretary-General of the Authority in accordance with article 172 of the Convention and the financial aspects of the implementation of the programmes of work of the Secretariat;

(*d*) The administrative budget;

(*e*) Financial obligations of States Parties arising from the implementation of this Agreement and Part XI as well as the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority;

(*f*) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

8. Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus.

9. The requirement of article 162, paragraph 2(y), of the Convention to establish a subsidiary organ to deal with financial matters shall be deemed to have been fulfilled by the establishment of the Finance Committee in accordance with this section.

3. CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL.[7] DONE AT NEW YORK ON 9 DECEMBER 1994[8]

The States Parties to this Convention,

Deeply concerned over the growing number of deaths and injuries resulting from deliberate attacks against United Nations and associated personnel,

Bearing in mind that attacks against, or other mistreatment of, personnel who act on behalf of the United Nations are unjustifiable and unacceptable, by whomsoever committed,

Recognizing that United Nations operations are conducted in the common interest of the international community and in accordance with the principles and purposes of the Charter of the United Nations,

Acknowledging the important contribution that United Nations and associated personnel make in respect of United Nations efforts in the fields of preventive diplomacy, peacemaking, peace-keeping, peace-building and humanitarian and other operations,

Conscious of the existing arrangements for ensuring the safety of United Nations and associated personnel, including the steps taken by the principal organs of the United Nations, in this regard,

Recognizing none the less that existing measures of protection for United Nations and associated personnel are inadequate,

Acknowledging that the effectiveness and safety of United Nations operations are enhanced where such operations are conducted with the consent and cooperation of the host State,

Appealing to all States in which United Nations and associated personnel are deployed and to all others on whom such personnel may rely, to provide comprehensive support aimed at facilitating the conduct and fulfilling the mandate of United Nations operations,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention of attacks committed against United Nations and associated personnel and for the punishment of those who have committed such attacks,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Convention:

(*a*) "United Nations personnel" means:

(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;

(ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

(*b*) "Associated personnel" means:

(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;

(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;

(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency, to carry out activities in support of the fulfillment of the mandate of a United Nations operation;

(*c*) "United Nations operation" means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

(i) Where the operation is for the purpose of maintaining or restoring international peace and security; or

(ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation;

(*d*) "Host State" means a State in whose territory a United Nations operation is conducted;

(*e*) "Transit State" means a State, other than the host State, in whose territory United Nations and associated personnel or their equipment are in transit or temporarily present in connection with a United Nations operation.

Article 2

Scope of application

1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.

2. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

Article 3

Identification

1. The military and police components of a United Nations operation and their vehicles, vessels and aircraft shall bear distinctive identification. Other personnel, vehicles, vessels and aircraft involved in the United Nations operation shall be appropriately identified unless otherwise decided by the Secretary-General of the United Nations.

2. All United Nations and associated personnel shall carry appropriate identification documents.

Article 4

Agreements on the status of the operation

The host State and the United Nations shall conclude as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation including, *inter alia*, provisions on privileges and immunities for military and police components of the operation.

Article 5

TRANSIT

A transit State shall facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6

RESPECT FOR LAWS AND REGULATIONS

1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:

(*a*) Respect the laws and regulations of the host State and the transit State; and

(*b*) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

2. The Secretary-General of the United Nations shall take all appropriate measures to ensure the observance of these obligations.

Article 7

DUTY TO ENSURE THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL

1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.

2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from the crimes set out in article 9.

3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

Article 8

DUTY TO RELEASE OR RETURN UNITED NATIONS AND ASSOCIATED PERSONNEL CAPTURED OR DETAINED

Except as otherwise provided in an applicable status-of-forces agreement, if United Nations or associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

Article 9

CRIMES AGAINST UNITED NATIONS AND ASSOCIATED PERSONNEL

1. The intentional commission of:

(*a*) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;

(*b*) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;

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

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

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

shall be made by each State Party a crime under its national law.

2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.

Article 10

ESTABLISHMENT OF JURISDICTION

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in the following cases:

(*a*) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(*b*) When the alleged offender is a national of that State.

2. A State Party may also establish its jurisdiction over any such crime when it is committed:

(*a*) By a stateless person whose habitual residence is in that State; or

(*b*) With respect to a national of that State; or

(*c*) In an attempt to compel that State to do or to abstain from doing any act.

3. Any State Party which has established jurisdiction as mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General of the United Nations.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 15 to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 11

PREVENTION OF CRIMES AGAINST UNITED NATIONS AND ASSOCIATE PERSONNEL

States Parties shall cooperate in the prevention of the crimes set out in article 9, particularly by:

(*a*) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories; and

(*b*) Exchanging information in accordance with national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 12

COMMUNICATION OF INFORMATION

1. Under the conditions provided for in its national law, the State Party in whose territory a crime set out in article 9 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General of the United Nations and, directly or through the Secretary-General, to the State or States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever a crime set out in article 9 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavor to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General of the United Nations and the State or States concerned.

Article 13

MEASURES TO ENSURE PROSECUTION OR EXTRADITION

1. Where the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law and without delay, to the Secretary-General of the United Nations and, either directly or through the Secretary-General, to:

(*a*) The State where the crime was committed;

(*b*) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his or her habitual residence;

(*c*) The State or States of which the victim is a national; and

(*d*) Other interested States.

Article 14

PROSECUTION OF ALLEGED OFFENDERS

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

Article 15

EXTRADITION OF ALLEGED OFFENDERS

1. To the extent that the crimes set out in article 9 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of article 10.

Article 16

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceeding brought in respect of the crimes set out in article 9, including assistance in obtaining evidence at their disposal necessary for the proceedings. The law of the requested State shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 17

FAIR TREATMENT

1. Any person regarding whom investigations or proceedings are being carried out in connection with any of the crimes set out in article 9 shall be guaranteed fair treatment, a fair trial and full protection of his or her rights at all stages of the investigations or proceedings.

2. Any alleged offender shall be entitled:

(*a*) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights; and

(*b*) To be visited by a representative of that State or those States.

Article 18

Notification of outcome of proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States Parties.

Article 19

Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

Article 20

Savings clauses

Nothing in this Convention shall affect:

(*a*) The applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of the United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards;

(*b*) The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons into their territories;

(*c*) The obligation of United Nations and associated personnel to act in accordance with the terms of the mandate of a United Nations operation;

(*d*) The right of States which voluntarily contribute personnel to a United Nations operation to withdraw their personnel from participation in such operation; or

(*e*) The entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service by persons voluntarily contributed by States to United Nations operations.

Article 21

Right of self-defense

Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence.

Article 22

DISPUTE SETTLEMENT

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by application 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 all or part of paragraph 1. The other States Parties shall not be bound by paragraph 1 or the relevant part thereof with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 23

REVIEW MEETINGS

At the request of one or more States Parties, and if approved by a majority of States Parties, the Secretary-General of the United Nations shall convene a meeting of the States Parties to review the implementation of the Convention, and any problems encountered with regard to its application.

Article 24

SIGNATURE

This convention shall be open for signature by all States, until 31 December 1995, at United Nations Headquarters in New York.

Article 25

RATIFICATION, ACCEPTANCE OR APPROVAL

This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 26

ACCESSION

This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27

ENTRY INTO FORCE

1. This Convention shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

2. For each state ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 28

DENUNCIATION

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 29

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

4. PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION, ON FURTHER REDUCTION OF SULPHUR EMISSIONS.[9] DONE AT OSLO ON 14 JUNE 1994[10]

The Parties,

Determined to implement the Convention on Long-range Transboundary Air Pollution,

Concerned that emissions of sulphur and other air pollutants continue to be transported across international boundaries and, in exposed parts of Europe and North America, are causing widespread damage to natural resources of vital environmental and economic importance, such as forests, soils and waters, and to materials, including historic monuments, and, under certain circumstances, have harmful effects on human health,

Resolved to take precautionary measures to anticipate, prevent or minimize emissions of air pollutants and mitigate their adverse effects,

Convinced that where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that such precautionary measures to deal with emissions of air pollutants should be cost-effective,

Mindful that measures to control emissions of sulphur and other air pollutants would also contribute to the protection of the sensitive Arctic environment,

Considering that the predominant sources of air pollution contributing to the acidification of the environment are the combustion of fossil fuels for energy production, and the main technological processes in various industrial sectors, as well as transport, which lead to emissions of sulphur, nitrogen oxides, and other pollutants,

Conscious of the need for a cost-effective regional approach to combating air pollution that takes account of the variations in effects and abatement costs between countries,

Desiring to take further and more effective action to control and reduce sulphur emissions,

Cognizant that any sulphur control policy, however cost-effective it may be at the regional level, will result in a relatively heavy economic burden on countries with economies that are in transition to a market economy,

Bearing in mind that measures taken to reduce sulphur emissions should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international competition and trade,

Taking into consideration existing scientific and technical data on emissions, atmospheric processes and effects on the environment of sulphur oxides, as well as on abatement costs,

Aware that in addition to emissions of sulphur, emissions of nitrogen oxides and of ammonia are also causing acidification of the environment,

Noting that under the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992, there is agreement to establish national policies and take corresponding measures to combat climate change, which can be expected to lead to reductions of sulphur emissions,

Affirming the need to ensure environmentally sound and sustainable development,

Recognizing the need to continue scientific and technical cooperation to elaborate further the approach based on critical loads and critical levels, including efforts to assess several air pollutants and various effects on the environment, materials and human health,

Underlining that scientific and technical knowledge is developing and that it will be necessary to take such developments into account when reviewing the adequacy of the obligations entered into under the present Protocol and deciding on further action,

Acknowledging the Protocol on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at least 30 per cent, adopted in Helsinki on 8 July 1985, and the measure already taken by many countries which have had the effect of reducing sulphur emissions,

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of the present Protocol,

1. "Convention" means the Convention on Long-range Transboundary Air Pollution, adopted in Geneva on 13 November 1979;

2. "EMEP" means the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe;

3. "Executive Body" means the Executive Body for the Convention constituted under article 10, paragraph 1, of the Convention;

4. "Commission" means the United Nations Economic Commission for Europe;

5. "Parties" means, unless the context otherwise requires, the Parties to the present Protocol;

6. "Geographical scope of EMEP" means the area defined in article 1, paragraph 4, of the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP), adopted in Geneva on 28 September 1984;

7. "SOMA" means a sulphur oxides management area designated in annex III under the conditions laid down in article 2, paragraph 3;

8. "Critical load" means a quantitative estimate of an exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur, according to present knowledge;

9. "Critical levels" means the concentration of pollutants in the atmosphere above which direct adverse effects on receptors, such as human beings, plants, ecosystems or materials, may occur, according to present knowledge;

10. "Critical sulphur deposition" means a quantitative estimate of the exposure to oxidized sulphur compounds, taking into account the effects of base cation uptake and base cation deposition, below which significant harmful effects on specified sensitive elements of the environment do not occur, according to present knowledge;

11. "Emission" means the discharge of substances into the atmosphere;

12. "Sulphur emissions" means all emissions of sulphur compounds expressed as kilotonnes of sulphur dioxide (kt SO2) to the atmosphere originating from anthropogenic sources excluding from ships in international traffic outside territorial waters;

13. "Fuel" means any solid, liquid or gaseous combustible material with the exception of domestic refuse and toxic or dangerous waste;

14. "Stationary combustion source" means any technical apparatus or group of technical apparatus that is co-located on a common site and is or could be discharging waste gases through a common stack, in which fuels are oxidized in order to use the heat generated;

15. "Major new stationary combustion source" means any stationary combustion source the construction or substantial modification of which is authorized after 31 December 1995 and the thermal input of which, when operating at rated capacity, is at least 50 MWth. It is a matter for the competent national authorities to decide whether a modification is substantial or not, taking into account such factors as the environmental benefits of the modification;

16. "Major existing stationary combustion source" means any existing stationary combustion source the thermal input of which, when operating at rated capacity, is at least 50 MWth;

17. "Gas oil" means any petroleum product within HS 2710, or any petroleum product which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85 per cent by volume, including distillation losses, distils at 350º C;

18. "Emission limit value" means the permissible concentration of sulphur compounds expressed as sulphur dioxide in the waste gases from a stationary combustion source expressed in terms of mass per volume of the waste gases expressed in mg SO2/Nm3, assuming an oxygen content by volume in the waste gas of 3 per cent in the case of liquid and gaseous fuels and 6 per cent in the case of solid fuels;

19. "Emission limitation" means the permissible total quantity of sulphur compounds expressed as sulphur dioxide discharged from a combustion source or group of combustion sources located either on a common site or within a defined geographical area, expressed in kilotonnes per year;

20. "Desulphurization rate" means the ratio of the quantity of sulphur which is separated at the combustion source site over a given period to the quantity of sulphur contained in the fuel which is introduced into the combustion source facilities and which is used over the same period;

21. "Sulphur budget" means a matrix of calculated contributions to the deposition of oxidized sulphur compounds in receiving areas, originating from the emissions from specified areas.

Article 2

BASIC OBLIGATIONS

1. The Parties shall control and reduce their sulphur emissions in order to protect human health and the environment from adverse effects, in particular acidifying effects, and to ensure, as far as possible, without entailing excessive costs, that depositions of oxidized sulphur compounds in the long term do not exceed critical loads for sulphur given, in annex I, as critical sulphur depositions, in accordance with present scientific knowledge.

2. As a first step, the Parties shall, as a minimum, reduce and maintain their annual sulphur emissions in accordance with the timing and levels specified in annex II.

3. In addition, any Party:

(*a*) Whose total land area is greater than 2 million square kilometres;

(*b*) Which has committed itself under paragraph 2 above to a national sulphur emission ceiling no greater than the lesser of its 1990 emissions or its obligation in the 1985 Helsinki Protocol on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at least 30 per cent, as indicated in annex II;

(*c*) Whose annual sulphur emissions that contribute to acidification in areas under the jurisdiction of one or more other Parties originate only from within areas under its jurisdiction that are listed as SOMAs in annex III, and has presented documentation to this effect; and

(*d*) Which has specified upon signature of, or accession to, the present Protocol its intention to act in accordance with this paragraph,

shall, as a minimum, reduce and maintain its annual sulphur emissions in the area so listed in accordance with the timing and levels specified in annex II.

4. Furthermore, the Parties shall make use of the most effective measures for the reduction of sulphur emissions, appropriate in their particular circumstances, for new and existing sources, which include, *inter alia*:

— Measures to increase energy efficiency;

— Measures to increase the use of renewable energy;

— Measures to reduce the sulphur content of particular fuels and to encourage the use of fuel with a low sulphur content, including the combined use of high-sulphur with low-sulphur or sulphur-free fuel;

— Measures to apply best available control technologies not entailing excessive cost,

using the guidance in annex IV.

5. Each Party, except those Parties subject to the United States/Canada Air Quality Agreement of 1991, shall as a minimum:

(*a*) Apply emission limit values at least as stringent as those specified in annex V to all major new stationary combustion sources;

(*b*) No later than 1 July 2004 apply, as far as possible without entailing excessive costs, emission limit values at least as stringent as those specified in annex V to those major existing stationary combustion sources the thermal input of which is above 500 MWth taking into account the remaining lifetime of a plant, calculated from the date of entry into force of the present Protocol, or apply equivalent emission limitations or other appropriate provisions, provided that these achieve the sulphur emission ceilings specified in annex II and, subsequently, further approach the critical loads as given in annex I, and no later than 1 July 2004 apply emission limit values or emission limitations to those major existing stationary combustion sources the thermal input of which is between 50 and 500 MWth using annex V as guidance;

(*c*) No later than two years after the date of entry into force of the present Protocol apply national standards for the sulphur content of gas oil at least as stringent as those specified in annex V. In cases where the supply of gas oil cannot otherwise be ensured, a State may extend the time period given in this subparagraph to a period of up to ten years. In this case it shall specify, in a declaration to be deposited together with the instrument of ratification, acceptance, approval or accession, its intention to extend the time period.

6. The Parties may, in addition, apply economic instruments to encourage the adoption of cost-effective approaches to the reduction of sulphur emissions.

7. The Parties to this Protocol may, at a session of the Executive Body, in accordance with rules and conditions which the Executive Body shall elaborate and adopt, decide whether two or more Parties may jointly implement the obligations set out in annex II. These rules and conditions shall ensure the fulfillment of the obligations set out in paragraph 2 above and also promote the achievement of the environmental objectives set out in paragraph 1 above.

8. The Parties shall, subject to the outcome of the first review provided for under article 8 and no later than one year after the completion of that review, commence negotiations on further obligations to reduce emissions.

Article 3

EXCHANGE OF TECHNOLOGY

1. The Parties shall, consistent with their national laws, regulations and practices, facilitate the exchange of technologies and techniques, including those that increase energy efficiency, the use of renewable energy and the processing of low-sulphur fuels, to reduce sulphur emissions, particularly through the promotion of:

(*a*) The commercial exchange of available technology;

(*b*) Direct industrial contacts and cooperation, including joint ventures;

(*c*) The exchange of information and experience;

(*d*) The provision of technical assistance.

2. In promoting the activities specified in paragraph 1 above, the Parties shall create favourable conditions by facilitating contacts and cooperation among appropriate organizations and individuals in the private and public sectors that are capable of providing technology, design and engineering services, equipment or finance.

3. The Parties shall, no later than six months after the date of entry into force of the present Protocol, commence consideration of procedures to create more favourable conditions for the exchange of technology to reduce sulphur emissions.

Article 4

NATIONAL STRATEGIES, POLICIES, PROGRAMMES, MEASURES AND INFORMATION

1. Each Party shall, in order to implement its obligations under article 2:

(*a*) Adopt national strategies, policies and programmes, no later than six months after the present Protocol enters into force for it, and

(*b*) Take and apply national measures

to control and reduce its sulphur emissions.

2. Each Party shall collect and maintain information on:

(*a*) Actual levels of sulphur emissions, and of ambient concentrations and depositions of oxidized sulphur and other acidifying compounds, taking into account, for those Parties within the geographical scope of EMEP, the work plan of EMEP, and

(*b*) The effects of depositions of oxidized sulphur and other acidifying compounds.

Article 5

REPORTING

1. Each Party shall report, through the Executive Secretary of the Commission, to the Executive Body, on a periodic basis as determined by the Executive Body, information on:

(*a*) The implementation of national strategies, policies, programmes and measures referred to in article 4, paragraph 1;

(*b*) The levels of national annual sulphur emissions, in accordance with guidelines adopted by the Executive Body, containing emission data for all relevant source categories; and

(*c*) The implementation of other obligations that it has entered into under the present Protocol,

in conformity with a decision regarding format and content to be adopted by the Parties at a session of the Executive Body. The terms of this decision shall be reviewed as necessary to identify any additional elements regarding the format and/or content of the information that are to be included in the reports.

2. Each Party within the geographical scope of EMEP shall report, through the Executive Secretary of the Commission, to EMEP, on a periodic basis to be determined by the Steering Body of EMEP and approved by the Parties at a session of the Executive Body, information on the levels of sulphur emissions with temporal and spatial resolution as specified by the Steering Body of EMEP.

3. In good time before each annual session of the Executive Body, EMEP shall provide information on:

(*a*) Ambient concentrations and deposition of oxidized sulphur compounds; and

(*b*) Calculations of sulphur budgets.

Parties in areas outside the geographical scope of EMEP shall make available similar information if requested to do so by the Executive Body.

4. The Executive Body shall, in accordance with article 10, paragraph 2(b), of the Convention, arrange for the preparation of information on the effects of depositions of oxidized sulphur and other acidifying compounds.

5. The Parties shall, at sessions of the Executive Body, arrange for the preparation, at regular intervals, of revised information on calculated and internationally optimized allocations of emission reductions for the States within the geographical scope of EMEP, with integrated assessment models, with a view to reducing further, for the purposes of article 2, paragraph 1, of the present Protocol, the difference between actual depositions of oxidized sulphur compounds and critical load values.

Article 6

RESEARCH, DEVELOPMENT AND MONITORING

The Parties shall encourage research, development, monitoring and cooperation related to:

(*a*) The international harmonization of methods for the establishment of critical loads and critical levels and the elaboration of procedures for such harmonization;

(*b*) The improvement of monitoring techniques and systems and of the modeling of transport, concentrations and deposition of sulphur compounds;

(*c*) Strategies for the further reduction of sulphur emissions based on critical loads and critical levels as well as on technical developments, and the improvement of integrated assessment modeling to calculate internationally optimized allocations of emission reductions taking into account an equitable distribution of abatement costs;

(*d*) The understanding of the wider effects of sulphur emissions on human health, the environment, in particular acidification, and materials, including historic and cultural monuments, taking into account the relationship between sulphur oxides, nitrogen oxides, ammonia, volatile organic compounds and tropospheric ozone;

(*e*) Emission abatement technologies, and technologies and techniques to enhance energy efficiency, energy conservation and the use of renewable energy;

(*f*) The economic evaluation of benefits for the environment and human health resulting from the reduction of sulphur emissions.

Article 7

Compliance

1. An Implementation Committee is hereby established to review the implementation of the present Protocol and compliance by the Parties with their obligations. It shall report to the Parties at sessions of the Executive Body and may make such recommendations to them as it considers appropriate.

2. Upon consideration of a report, and any recommendations, of the Implementation Committee, the Parties, taking into account the circumstances of a matter and in accordance with Convention practice, may decide upon and call for action to bring about full compliance with the present Protocol, including measures to assist a Party's compliance with the Protocol, and to further the objectives of the Protocol.

3. The Parties shall, at the first session of the Executive Body after the entry into force of the present Protocol, adopt a decision that sets out the structure and functions of the Implementation Committee as well as procedures for its review of compliance.

4. The application of the compliance procedure shall be without prejudice to the provisions of article 9 of the present Protocol.

Article 8

Reviews by the Parties at Sessions of the Executive Body

1. The Parties shall, at sessions of the Executive Body, pursuant to article 10, paragraph 2(a), of the Convention, review the information supplied by the Parties and EMEP, the data on the effects of depositions of sulphur and other acidifying compounds and the reports of the Implementation Committee referred to in article 7, paragraph 1, of the present Protocol.

2. (*a*) The Parties shall, at sessions of the Executive Body, keep under review the obligations set out in the present Protocol, including:

(i) Their obligations in relation to their calculated and internationally optimized allocations of emission reductions referred to in article 5, paragraph 5; and

(ii) The adequacy of the obligations and the progress made towards the achievement of the objectives of the present Protocol;

(*b*) Reviews shall take into account the best available scientific information on acidification, including assessments of critical loads, technological developments, changing economic conditions and the fulfillment of the obligations on emission levels;

(*c*) In the context of such reviews, any Party whose obligations on sulphur emission ceilings under annex II hereto do not conform to the calculated and internationally optimized allocations of emission reductions for that Party, required to reduce the difference between depositions of sulphur in 1990 and critical sulphur depositions within the geographical scope of EMEP by at least 60 per cent, shall make every effort to undertake revised obligations;

(*d*) The procedures, methods and timing for such reviews shall be specified by the Parties at a session of the Executive Body. The first such review shall be completed in 1997.

Article 9

SETTLEMENT OF DISPUTES

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the present Protocol, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice. The parties to the dispute shall inform the Executive Body of their dispute.

2. When ratifying, accepting, approving or acceding to the present Protocol, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Protocol, it recognizes one or both of the following means of dispute settlement as compulsory *ipso facto* and without agreement, 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 procedures to be adopted by the Parties at a session of the Executive Body as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute agree otherwise.

5. Except in a case where the parties to a dispute have accepted the same means of dispute settlement under paragraph 2, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. For the purpose of paragraph 5, a conciliation commission shall be created. The commission shall be composed of an equal number of members appointed by each party concerned or, where parties in conciliation share the same interest, by the group sharing that interest, and a chairman chosen jointly by the members so appointed. The commission shall render a recommendatory award, which the parties shall consider in good faith.

Article 10

Annexes

The annexes to the present Protocol shall form an integral part of the Protocol. Annexes I and IV are recommendatory in character.

Article 11

Amendments and Adjustments

1. Any Party may propose amendments to the present Protocol. Any Party to the Convention may propose an adjustment to annex II to the present Protocol to add to it its name, together with emission levels, sulphur emission ceilings and percentage emission reductions.

2. Such proposed amendments and adjustments shall be submitted in writing to the Executive Secretary of the Commission, who shall communicate them to all Parties. The Parties shall discuss the proposed amendments and adjustments at the next session of the Executive Body, provided that those proposals have been circulated by the Executive Secretary to the Parties at least ninety days in advance.

3. Amendments to the present Protocol and to its annexes II, III and V shall be adopted by consensus of the Parties present at a session of the Executive Body, and shall enter into force for the Parties which have accepted them on the ninetieth day after the date on which two thirds of the Parties have deposited with the Depositary their instruments of acceptance thereof. Amendments shall enter into force for any other Party on the ninetieth day after the date on which that Party has deposited its instrument of acceptance thereof.

4. Amendments to the annexes to the present Protocol, other than to the annexes referred to in paragraph 3 above, shall be adopted by consensus of the Parties present at a session of the Executive Body. On the expiry of ninety days from the date of its communication by the Executive Secretary of the Commission, an amendment to any such annex shall become effective for those Parties which have not submitted to the Depositary a notification in accordance with the provisions of paragraph 5 below, provided that at least sixteen Parties have not submitted such a notification.

5. Any Party that is unable to approve an amendment to an annex, other than to an annex referred to in paragraph 3 above, shall so notify the Depositary in writing within ninety days from the date of the communication of its adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit of an instrument of acceptance with the Depositary, the amendment to such an annex shall become effective for that Party.

6. Adjustments to annex II shall be adopted by consensus of the Parties present at a session of the Executive Body and shall become effective for all Parties to the present Protocol on the ninetieth day following the date on which the Executive Secretary of the Commission notifies those Parties in writing of the adoption of the adjustment.

Article 12

SIGNATURE

1. The present Protocol shall be open for signature at Oslo on 14 June 1994, then at United Nations Headquarters in New York until 12 December 1994 by States members of the Commission as well as States having consultative status with the Commission, pursuant to paragraph 8 of Economic and Social Council resolution 36(IV) of 28 March 1947, and by regional economic integration organizations, constituted by sovereign States members of the Commission, which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the Protocol, provided that the States and organizations concerned are Parties to the Convention and are listed in annex II.

2. In matters within their competence, such regional economic integration organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which the present Protocol attributes to their member States. In such cases, the member States of these organizations shall not be entitled to exercise such rights individually.

Article 13

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. The present Protocol shall be subject to ratification, acceptance or approval by Signatories.

2. The present Protocol shall be open for accession as from 12 December 1994 by the States and organizations that meet the requirements of article 12, paragraph 1.

Article 14

DEPOSITARY

The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations, who will perform the functions of depositary.

Article 15

ENTRY INTO FORCE

1. The present Protocol shall enter into force on the ninetieth day following the date on which the sixteenth instrument of ratification, acceptance, approval or accession has been deposited with the depositary.

2. For each State and organization referred to in article 12, paragraph 1, which ratifies, accepts or approves the present Protocol or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the ninetieth day following the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.

Article 16

WITHDRAWAL

At any time after five years from the date on which the present Protocol has come into force with respect to a Party, that Party may withdraw from it by giving written notification to the depositary. Any such withdrawal shall take effect on the ninetieth day following the date of its receipt by the depositary, or on such later date as may be specified in the notification of the withdrawal.

Article 17

AUTHENTIC TEXTS

The original of the present Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

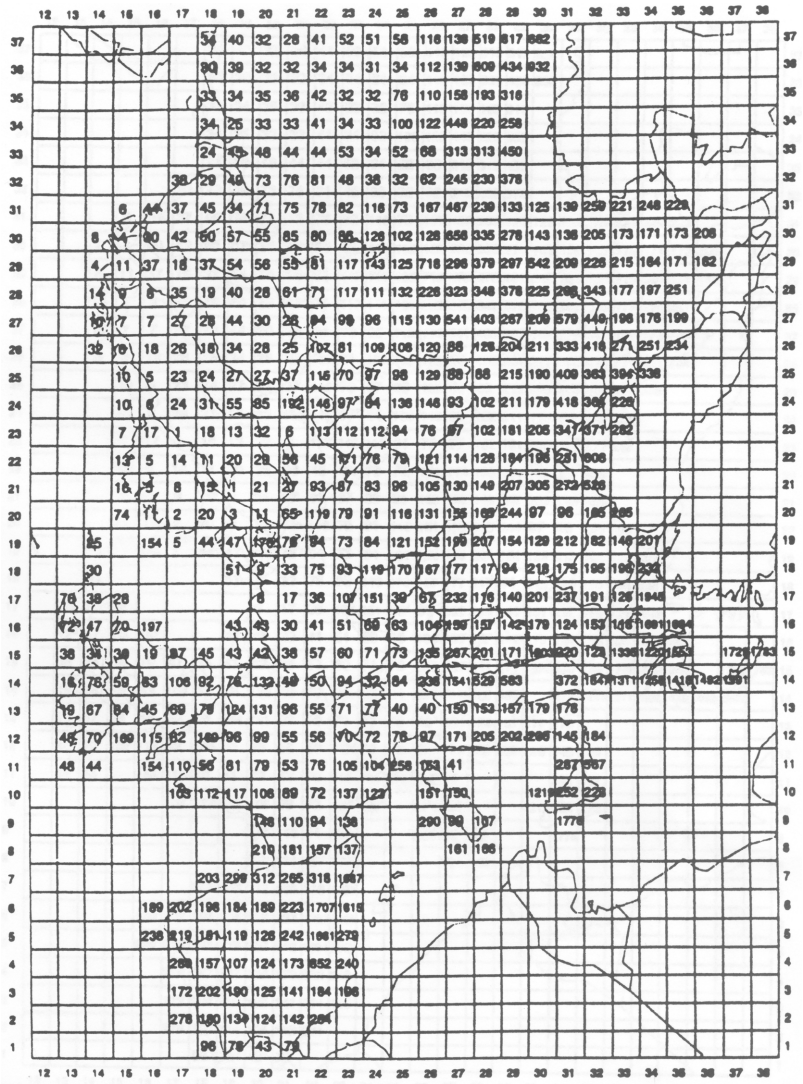
IN WITNESS THEREOF the undersigned, being duly authorized thereto, have signed the present Protocol.

DONE at Oslo, this fourteenth day of June one thousand nine hundred and ninety-four.

ANNEX I

Critical Sulphur Deposition

(5-percentile in centigrams of sulphur per square metre per year)



ANNEX II

Sulphur Emission Ceilings and Percentage Emission Reductions

The sulphur emission ceilings listed in the table below give the obligations referred to in paragraphs 2 and 3 of article 2 of the present Protocol. The 1980 and 1990 emission levels and the percentage emission reductions listed are given for information purposes only.

	Emission levels kt SO_2 per year		Sulphur emission celings kt SO_2 per year			Percentage emission reductions (base year 1980)		
	1980	1990	2000	2005	2010	2000	2005	2010
Austria	397	90	78			80		
Belarus	740		456	400	370	38	46	50
Belgium	828	443	248	232	215	0	72	74
Bulgaria	2050	2020	1374	1230	1127	33	40	45
Canada — national	4614	3700	3200			30		
—SOMA	3245		1750			46		
Croatia	150	160	133	125	117	11	17	22
Czech Republic	2257	1876	1128	902	632	50	60	72
Denmark	451	180	90			80		
Finland	584	260	116			80		
France	3348	1202	868	770	737	74	77	78
Germany	7494	5803	1300	990		83	87	
Greece	400	510	595	580	570	0	3	4
Hungary	1632	1010	898	816	653	45	50	60
Ireland	222	168	155			30		
Italy	3800		1330	1042		65	73	
Liechtenstein	0.4	0.1	0.1			75		
Luxembourg	24		10			68		
Netherlands	466	207	106			77		
Norway	142	54	34			76		
Poland	4100	3210	2583	2173	1397	37	47	66
Portugal	266	284	304	294		0	3	
Russian Federation	7161	4460	4440	4297	4297	38	40	40
Slovakia	843	539	337	295	240	60	65	72
Slovenia	235	195	130	94	71	45	60	70
Spain	3319	2316	2143			35		
Sweden	507	130	100			80		
Switzerland	126	62	60			52		
Ukraine	3850		2310			40		
United Kingdom	4890	3780	2449	1470	980	50	70	80
European Community	25513		9598			62		

NOTES

(a) If, in a given year before 2005, a Party finds that, due to a particularly cold winter, a particularly dry summer and an unforeseen short-term loss of capacity in the power supply system, domestically or in a neighboring country, it cannot comply with its

obligations under this annex, it may fulfill those obligations by averaging its national annual sulphur emissions for the year in question, the year preceding that year and the year following it, provided that the emission level in any single year is not more than 20 per cent above the sulphur emission ceiling.

The reason for exceedance in any given year and the method by which the three-year average figure will be achieved, shall be reported to the Implementation Committee.

(b) For Greece and Portugal percentage emission reductions given are based on the sulphur emission ceilings indicated for the year 2000.

(c) European part within the EMEP area.

ANNEX III

SOMAs

The following SOMA is listed for the purposes of the present Protocol:

South-east Canada SOMA

This is an area of 1 million km2 which includes all the territory of the provinces of Prince Edward Island, Nova Scotia and New Brunswick, all the territory of the province of Quebec south of a straight line between Havre-St. Pierre on the north coast of the Gulf of Saint Lawrence and the point where the Quebec-Ontario boundary intersects the James Bay coastline, and all the territory of the province of Ontario south of a straight line between the point where the Ontario-Quebec boundary intersects the James Bay coastline and Nipigon River near the north shore of Lake Superior.

ANNEX IV

Control Technologies for Sulphur Emissions from Stationary Sources

I. INTRODUCTION

1. The aim of this annex is to provide guidance for identifying sulphur control options and technologies for giving effect to the obligations of the present Protocol.

2. The annex is based on information on general options for the reduction of sulphur emissions and in particular on emission control technology performance and costs contained in official documentation of the Executive Body and its subsidiary bodies.

3. Unless otherwise indicated, the reduction measures listed are considered, on the basis of operational experience of several years in most cases, to be the most well-established and economically feasible best available technologies. However, the continuously expanding experience of low-emission measures and technologies at new plants as well as of the retrofitting of existing plants will necessitate regular review of this annex.

4. Although the annex lists a number of measures and technologies spanning a wide range of costs and efficiencies, it cannot be considered as an exhaustive statement of control options. Moreover, the choice of control measures and technologies for any particular case will depend on a number of factors, including cur-

rent legislation and regulatory provisions and, in particular, control technology requirements, primary energy patters, industrial infrastructure, economic circumstances and specific in-plant conditions.

5. The annex mainly addresses the control of oxidized sulphur emissions considered as the sum of sulphur dioxide (SO_2) and sulphur trioxide (SO_3), expressed as SO_2. The share of sulphur emitted as either sulphur oxides or other sulphur compounds from non-combustion processes and other sources is small compared to sulphur emissions from combustion.

6. When measures or technologies are planned for sulphur sources emitting other components, in particular nitrogen oxides (NO_x), particulates, heavy metals and volatile organic compounds (VOCs), it is worthwhile to consider them in conjunction with pollutant-specific control options in order to maximize the overall abatement effect and minimize the impact of the environment and, especially, to avoid the transfer of air pollution problems to other media (such as waste water and solid waste).

II. Major Stationary Sources for Sulphur Emissions

7. Fossil fuel combustion processes are the main source of anthropogenic sulphur emissions from stationary sources. In addition, some non-combustion processes may contribute considerably to the emissions. The major stationary source categories, based on EMEP/CORINAIR'90, include:

(i) Public power, cogeneration and district heating plants:

(a) Boilers;

(b) Stationary combustion turbines and internal combustion engines;

(ii) Commercial, institutional and residential combustion plants:

(a) Commercial boilers;

(b) Domestic heaters;

(iii) Industrial combustion plants and processes with combustion:

(a) Boilers and process heaters;

(b) Processes, e.g., metallurgical operations such as roasting and sintering, coke oven plants, processing of titanium dioxide (TiO_2), etc.;

(c) Pulp production;

(iv) Non-combustion processes, e.g., sulphuric acid production, specific organic synthesis processes, treatment of metallic surfaces;

(v) Extraction, processing and distribution of fossil fuels;

(vi) Waste treatment and disposal, e.g., thermal treatment of municipal and industrial waste.

8. Overall data (1990) for the ECE region indicate that about 88 per cent of total sulphur emissions originate from all combustion processes (20 per cent from industrial combustion), 5 per cent from production processes and 7 per cent from oil refineries. The power plant sector in many countries is the major single contributor to sulphur emissions. In some countries, the industrial sector (including refineries) is also an important SO_2 emitter. Although emissions from refineries in the ECE region are relatively small, their impact on sulphur emissions from other sources is large due to the sulphur in the oil products. Typically 60 per cent of the sulphur intake present in the crudes remains in the products, 30 per cent is recovered as elemental sulphur and 10 per cent is emitted from refinery stacks.

III. General Options for Reduction of Sulphur Emissions from Combustion

9. General options for reduction of sulphur emissions are:

(i) Energy management measures:*

(a) Energy saving

The rational use of energy (improved energy efficiency/process operation, co-generation and/or demand-side management) usually results in a reduction in sulphur emissions.

(b) Energy mix

In general, sulphur emissions can be reduced by increasing the proportion of non-combustion energy sources (i.e. hydro, nuclear, wind, etc.) to the energy mix. However, further environmental impacts have to be considered.

(ii) Technological options:

(a) Fuel switching

The SO_2 emissions during combustion are directly related to the sulphur content of the fuel used.

Fuel switching (e.g. from high- to low-sulphur coals and/or liquid fuels, or from coal to gas) leads to lower sulphur emissions, but there may be certain restrictions, such as the availability of low-sulphur fuels and the adaptability of existing combustion systems to different fuels. In many ECE countries, some coal or oil combustion plants are being replaced by gas-fired combustion plants. Dual-fuel plants may facilitate fuel switching.

(b) Fuel cleaning

Cleaning of natural gas is state-of-the-art technology and widely applied for operational reasons.

Cleaning of process gas (acid refinery gas, coke oven gas, biogas, etc.) is also state-of-the-art technology.

Desulphurization of liquid fuels (light and middle fractions) is state-of-the-art technology.

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*Options (i)(a) and (b) are integrated in the energy structure and policy of a Party. Implementation status, efficiency and costs per sector are not considered here.

Desulphurization of heavy fractions is technically feasible, nevertheless, the crude properties should be kept in mind. Desulphurization of atmospheric residue (bottom products from atmospheric crude distillation units) for the production of low-sulphur fuel oil is not, however, commonly practised, processing low-sulphur crude is usually preferable. Hydro-cracking and full conversion technology have matured and combine high sulphur retention with improved yield of light products. The number of full conversion refineries is as yet limited. Such refineries typically recover 80 to 90 per cent of the sulphur intake and convert all residues into light products or other marketable products. For this type of refinery, energy consumption and investment costs are increased. Typical sulphur content for refinery products is given in table 1 below.

TABLE I

Sulphur content from refinery products
(S content (%))

	Typical present values	Anticipated future values
Gasoline	0.1	0.05
Jet kerosene	0.1	0.01
Diesel	0.05 – 0.3	< 0.05
Heating oil	0.1 – 0.2	< 0.1
Fuel oil	0.2 – 1.5	< 1
Marine diesel	0.5 – 1.0	< 0.5
Bunker oil	3.0 – 5.0	< 1 (coastal areas) < 2 (high seas)

Current technologies to clean hard coal can remove approximately 50 per cent of the inorganic sulphur (depending on coal properties) but none of the organic sulphur. More effective technologies are being developed which, however, involve higher specific investment and costs. Thus the efficiency of sulphur removal by coal cleaning is limited compared to flue gas desulphurization. There may be a country-specific optimization potential for the best combination of fuel cleaning and flue gas cleaning.

(c) Advanced combustion technologies

These combustion technologies with improved thermal efficiency and reduced sulphur emissions include: fluidized-bed combustion (FBC); bubbling (BFBC), circulating (CFBC) and pressurized (PFBC); integrated gasification combined-cycle (IGCC); and combined-cycle gas turbines (CCGT).

Stationary combustion turbines can be integrated into combustion systems in existing conventional power plants which can increase overall efficiency by 5 to 7 per cent, leading, for example, to a significant reduction in SO_2 emissions. However, major alterations to the existing furnace system become necessary.

Fluidized-bed combustion is a combustion technology for burning hard coal and brown coal, but it can also burn other solid fuels such as petroleum coke and low-grade fuels such as waste, peat and wood. Emissions can additionally be reduced by integrated combustion control in the system due to the addition of lime/limestone to the bed material. The total installed capacity of FBC has reached approximately 30,000 MW_{th} (250 to 350 plants), including 8,000 MW_{th} in the capacity range of greater than 50 MW_{th}. By-products from this process may cause problems with respect to use and/or disposal, and further development is required.

The IGCC process includes coal gasification and combined-cycle power generation in a gas and steam turbine. The gasified coal is burnt in the combustion chamber of the gas turbine. Sulphur emission control is achieved by the use of state-of-the-art technology for raw gas cleaning facilities upstream of the gas turbine. The technology also exists for heavy oil residues and bitumen emulsions. The installed capacity is presently about 1,000 MW_{el} (5 plants).

Combined-cycle gas-turbine power stations using natural gas as fuel with an energy efficiency of approximately 48 to 52 per cent are currently being planned.

(d) Process and combustion modifications

Combustion modifications comparable to the measures used for NO_x emission control do not exist, as during combustion the organically and/or inorganically bound sulphur is almost completely oxidized (a certain percentage depending on the fuel properties and combustion technology is retained in the ash).

In this annex dry additive processes for conventional boilers are considered as process modifications due to the injection of an agent into the combustion unit. However, experience has shown that, when applying these processes, thermal capacity is lowered, the Ca/S ratio is high and sulphur removal low. Problems with the further utilization of the by-product have to be considered, so that this solution should usually be applied as an intermediate measure and for smaller units (table 2).

The table was established mainly for large combustion installations in the public sector. However, the control options are also valid for other sectors with similar exhaust gases.

(e) Flue gas desulphurization (FGD) processes

These processes aim at removing already formed sulphur oxides, and are also referred to as secondary measures. The state-of-the-art technologies for flue gas treatment processes are all based on the removal of sulphur by wet, dry or semi-dry and catalytic chemical processes.

To achieve the most efficient programme for sulphur emission reductions beyond the energy management measures listed in (i) above a combination of technological options identified in (ii) above should be considered.

In some cases options for reducing sulphur emissions may also result in the reduction of emissions of CO_2, NO_x and other pollutants.

In public power, cogeneration and district heating plants, flue gas treatment processes used include: lime/limestone wet scrubbing (LWS); spray dry absorption (SDA); Wellman Lord process (WL); ammonia scrubbing (AS); and combined NO_x/SO_x removal processes (activated carbon process (AC) and combined catalytic NO_x/SO_x removal).

In the power generation sector, LWS and SDA cover 85 per cent and 10 per cent, respectively, of the installed FGD capacity.

TABLE 2

Emissions of sulphur oxides obtained from the application of technological options to fossil-fuelled boilers

	Uncontrolled emissions		Additive injection		Wet scrubbing [a]		Spray dry absorption [b]	
Reduction efficiency (%)			up to 60		75		up to 90	
Energy efficiency ($kW/10^3 m^3/h$)			0.1 – 1		6 – 10		3 – 6	
Total installed capacity (ECE Eur)(MW)					194,000		16,000	
Type of by-product			Mix of Ca salts and fly ashes		Gypsum (sludge/waste water)		Mix of $CaSO_2$ * 1/2 H_2O and fly ashe)	
Specific investment (cost ECU (1980/kW)			20 – 50		60– 250		90 – 220	
	mg/m [c]	g/kWh	mg/m [c]	g/kWh	mg/m [c]	g/kWh	mg/m [c]	g/kWh
Hard coal [d]	1,000–10,000	3.5–35	400–4,000	1.4–14	-400 (<200, 1% S)	<1.4 <0.7	-400 (<200, 1% S)	<1.4 <0.7
Brown coal [d]	1,000–20,000	4.2–84	400–8,000	1.7–33.6	-400 (<200, 1% S)	<1.7 <0.8	-400 (<200, 1% S)	<1.7 <0.8
Heavy oil [d]	1,000–10,000	2.8–28	400–4,000	1.1–11	-400 (<200, 1% s)	<1.1 <0.6	-400 (<200, 1% S)	<1.1 <0.6

	Ammonia scrubbing [b]		Wellman Lord [a]		Activated carbon [a]		Combined catalytic [a]	
Reduction efficiency (%)	up to 90		95		95		95	
Energy efficiency ($kW/10^3 m^3/h$)	3–10		10–15		4–8		2	
Total installed capacity (ECE Eur)(MW)	200		2,000		700		1,300	
Type of by-product	Ammonia fertilizer		Elemental S Sulphuric acid (99 voL%)		Elemental S Sulphuric acid (99 voL%)		Sulphuric acid (70 voL%)	
Specific investment (cost ECU(1990/kW)	230–270 [e]		200–300 [e]		280–320 [e, f]		320–350 [e, f]	
	mg/m [c]	g/kWh	mg/m [c]	g/kWh	mg/m [c]	g/kWh	mg/m [c]	g/kWh
Hard coal [d]	-400 (<200, 1% S)	<1.4 <0.7	-400 (<200, 1% S)	<1.4 <0.7	-400 (<200, 1% S)	<1.4 <0.7	-400 (<200, 1% S)	<1.4 <0.7
Brown coal [d]	-400 (<200, 1% S)	<1.7 <0.8	-400 (<200, 1% S)	<1.7 <0.8	-400 (<200, 1% S)	<1.7 <0.8	-400 (<200, 1% S)	<1.7 <0.8
Heavy oil [d]	-400 (<200, 1% S)	<1.1 <0.8	-400 (<200, 1% S)	<1.1 <0.8	-400 (<200, 1% S)	<1.1 <0.8	-400 (<200, 1% S)	<1.1 <0.8

[a]For high sulphur content in the fuel the removal efficiency has to be adapted. However, the scope for doing so may be process-specific. Availability of these processes is usually 95 per cent.

[b]Limited applicability for high-sulphur fuels.

[c]Emission in mg/m3 (STP), dry, 6 per cent oxygen for solid fuels. Three per cent oxygen for liquid fuels.

[d]Conversion factor depends on fuel properties, specific fuel gas volume and thermal efficiency of boiler (conversion factors (m3/kWhel, thermal efficiency: 36 per cent) used: hard coal: 3.50; brown coal: 4.20; heavy oil: 2.80).

[e]Specific investment cost relates to a small sample of installations.

[f]Specific investment cost includes denitrification process.

Several new flue gas desulphurization processes, such as electron beam dry scrubbing (EBDS) and Mark 13A, have not yet passed the pilot stage.

Table 2 above shows the efficiency of the above-mentioned secondary measures based on the practical experience gathered from a large number of implemented plants. The implemented capacity as well as the capacity range are also mentioned. Despite comparable characteristics for several sulphur abatement technologies, local or plant-specific influences may lead to the exclusion of a given technology.

Table 2 also includes the usual investment cost ranges for the sulphur abatement technologies listed in sections (ii)(c), (d) and (e). However, when applying these technologies to individual cases it should be noted that investment costs of emission reduction measures will depend amongst other things on the particular technologies used, the required control systems, the plant size, the extent of the required reduction and the time-scale of planned maintenance cycles. The table thus gives only a broad range of investment costs. Investment costs for retrofit generally exceed those for new plants.

IV. Control Techniques for Other Sectors

10. The control techniques listed in section 9(ii)(a) to (e) are valid not only in the power plant sector but also in various other sectors of industry. Several years of operational experience have been acquired, in most cases in the power plant sector.

11. The application of sulphur abatement technologies in the industrial sector merely depends on the process's specific limitations in the relevant sectors. Important contributors to sulphur emissions and corresponding reduction measures are presented in table 3 below.

Table 3

Source	***Reduction measures***
Roasting of non-ferrous sulphides	Wet sulphuric acid catalytic process (WSA)
Viscose production	Double-contact process
Sulphuric acid production	Double-contact process, improved yield
Kraft pulp production	Variety of process-integrated measures

12. In the sectors listed in table 3, process-integrated measures, including raw material changes (if necessary combined with sector-specific flue gas treatment), can be used to achieve the most effective reduction of sulphur emissions.

13. Reported examples are the following:

(*a*) In new kraft pulp mills, sulphur emission of less than 1 kg of sulphur per tonne of pulp AD (air dried) can be achieved;*

(*b*) In sulphite pulp mills, 1 to 1.5 kg of sulphur per tonne of pulp AD can be achieved;

(*c*) In the case of roasting of suphides, removal efficiencies of 80 to 99 per cent for 10,000 to 200,000 m^3/h units have been reported (depending on the process);

(*d*) For one iron ore sintering plant, an FGD unit of 320,000 m^3/h capacity achieves a clean gas value below 1000 mg SO_x/Nm_x at 6 per cent O_2;

(*e*) Coke ovens are achieving less than 400 mg SO_x/Nm^3 at 6 per cent O_2;

(*f*) Sulphuric acid plants achieve a conversion rate larger than 99 per cent;

(*g*) Advanced Claus plant achieves sulphur recovery of more than 99 per cent.

V. By-Products and Side-Effects

14. As efforts to reduce sulphur emissions from stationary sources are increased in the countries of the ECE region, the quantities of by-products will also increase.

15. Options which would lead to usable by-products should be selected. Furthermore, options that lead to increased thermal efficiency and minimize the waste disposal issue whenever possible should be selected. Although most by-products are usable or recyclable products such as gypsum, ammonia salts, sulphuric acid or sulphur, factors such as market conditions and quality standards need to be taken into account. Further utilization of FBC and SDA by-products have to be improved and investigated as disposal sites and disposal criteria limit disposal in several countries.

16. The following side-effects will not prevent the implementation of any technology or method but should be considered when several sulphur abatement options are possible:

(a) Energy requirements of the gas treatment processes;

(b) Corrosion attach due to the formation of sulphuric acid by the reaction of sulphur oxides with water vapour;

(c) Increased use of water and waste water treatment;

(d) Reagent requirements;

(e) Solid waste disposal.

VI. Monitoring and Reporting

17. The measures taken to carry out national strategies and policies for the abatement of air pollution include: legislation and regulatory provisions, economic incentives and disincentives, as well as technological requirements (best available technology).

18. In general, standards are set, per emission source, according to plant size, operating mode, combustion technology, fuel type and whether it is a new or existing plant. An alternative approach also used is to set a target for the reduction of total sulphur emissions from a group of sources and to allow a choice of where to take action to reach this target (the bubble concept).

19. Efforts to limit the sulphur emissions to the levels set out in the national framework legislation have to be controlled by a permanent monitoring and reporting system and reported to the supervising authorities.

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* Control of sulphur-to-sodium ration is required, i.e. removal of sulphur in the form of neutral salts and use of sulphur-free sodium make-up.

20. Several monitoring systems, using both continuous and discontinuous measurement methods, are available. However, quality requirements vary. Measurements are to be carried out by qualified institutes using measuring and monitoring systems. To this end, a certification system can provide the best assurance.

21. In the framework of modern automated monitoring systems and process control equipment, reporting does not create a problem. The collection of data for further use is a state-of-the-art technique; however, data to be reported to competent authorities differ from case to case. To obtain better comparability, data sets and prescribing regulations should be harmonized. Harmonization is also desirable for quality assurance of measuring and monitoring systems. This should be taken into account when comparing data.

22. To avoid discrepancies and inconsistencies, key issues and parameters, including the following, must be well defined:

(*a*) Definition of standards expressed as ppmv, mg/Nm^3, g/GJ, kg/h or kg/tonne of product. Most of these units need to be calculated and need specification in terms of gas temperature, humidity, pressure, oxygen content or heat input value;

(*b*) Definition of the period over which standards are to be averaged, expressed as hours, months or a year;

(*c*) Definition of failure times and corresponding emergency regulations regarding bypass of monitoring systems or shut-down of the installation;

(*d*) Definition of methods for back-filling of data missed or lost as a result of equipment failure;

(*e*) Definition of the parameter set to be measured. Depending on the type of industrial process, the necessary information may differ. This also involves the location of the measurement point within the system.

23. Quality control of measurements to be ensured.

ANNEX V

Emission and Sulphur Content Limit Values

Emission limit values for major stationary combustion sources[a]

	(i) MW_{th}	*(ii)* *Emission limit value* (*mg SO_2/Nm^3h*)[b]	*(iii)* *Desulphurization rate (%)*
1. Solid Fuels (based on 6% oxygen in flue gas)	50–100	2000	
	100–500	2000–400 (linear decrease)	40 (for 100–167 MW_{th}) 40–90 (linear increase for 167–500 MW_{th})
	>500	400	90
2. Liquid Fuels (based on 3% oxygen in flue gas)	50–300	1 700	
	300-500	1 700-400 (linear decrease)	90
	>500	400	90
3. Gaseous Fuels (based on 3% oxygen in flue gas)			
Gaseous fuels in general		35	
Liquefied gas		5	
Low calorific gases from gasification of refinery residues, coke oven gas, blast-furnace gas)		800	

B. Gas oil	Sulphur content (%)
Diesel for on-road vehicles	0.05
Other types	0.2

[a]As guidance, for a plant with a multi-fuel firing unit involving the simultaneous use of two or more types of fuels, the competent authorities shall set emission limit values taking into account the emission limit values from column (ii) relevant for each individual fuel, the rate of thermal input delivered by each fuel and, for refineries, the relevant specific characteristics of the plant. For refineries, such a combined limit value shall under no circumstances exceed 1700 mg SO_2/Nm^3.

[b]mg SO_2/Nm^3 is defined at a temperature of 273º K and a pressure of 101.3 kPa, after correction for water vapour content.

In particular, the limit values shall not apply to the following plants:

— Plants in which the products of combustion are used for direct heating, drying, or any other treatment of objects or materials, e.g. reheating furnaces, furnaces for heat treatment;

— Post-combustion plants, i.e. any technical apparatus designed to purify the waste gases by combustion which is not operated as an independent combustion plant;

— Facilities for the regeneration of catalytic cracking catalysts;

— Facilities for the conversion of hydrogen sulphide into sulphur;

— Reactors used in the chemical industry;

— Coke battery furnaces;

— Cowpers;

— Waste incinerators;

— Plants powered by diesel, petrol and gas engines or by gas turbines, irrespective of the fuel used.

In a case where a Party, due to the high sulphur content of indigenous solid or liquid fuels, cannot meet the emission limit values set forth in column (ii), it may apply the desulphurization rates set forth in column (iii) or a maximum limit value of 800 mg SO_2/Nm^3 (although preferably not more than 650 mg SO_2/Nm^3). The Party shall report any such application to the Implementation Committee in the calendar year in which it is made.

Where two or more separate new plants are installed in such a way that, taking technical and economic factors into account, their waste gases could, in the judgment of the competent authorities, be discharged through a common stack, the combination formed by such plants is to be regarded as a single unit.

5. UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION IN THOSE COUNTRIES EXPERIENCING SERIOUS DROUGHT AND/OR DESERTIFICATION, PARTICULARLY IN AFRICA.[11] OPENED FOR SIGNATURE AT PARIS ON 14 OCTOBER 1994[12]

The Parties to this Convention,

Affirming that human beings in affected or threatened areas are at the centre of concerns to combat desertification and mitigate the effects of drought,

Reflecting the urgent concern of the international community, including States and international organizations, about the adverse impacts of desertification and drought,

Aware that arid, semi-arid and dry sub-humid areas together account for a significant proportion of the Earth's land area and are the habitat and source of livelihood for a large segment of its population,

Acknowledging that desertification and drought are problems of global dimension in that they affect all regions of the world and that joint action of the international community is needed to combat desertification and/or mitigate the effects of drought,

Noting the high concentration of developing countries, notably the least developed countries, among those experiencing serious drought and/or desertification, and the particularly tragic consequences of these phenomena in Africa,

Noting also that desertification is caused by complex interactions among physical, biological, political, social, cultural and economic factors,

Considering the impact of trade and relevant aspects of international economic relations on the ability of affected countries to combat desertification adequately,

Conscious that sustainable economic growth, social development and poverty eradication are priorities of affected developing countries, particularly in Africa, and are essential to meeting sustainability objectives,

Mindful that desertification and drought affect sustainable development through their interrrelationships with important social problems such as poverty, poor health and nutrition, lack of food security, and those arising from migration, displacement of persons and demographic dynamics,

Appreciating the significance of the past efforts and experience of States and international organizations in combating desertification and mitigating the effects of drought, particularly in implementing the Plan of Action to Combat Desertification which was adopted at the United Nations Conference on Desertification in 1977,

Realizing that, despite efforts in the past, progress in combating desertification and mitigating the effects of drought has not met expectations and that a new and more effective approach is needed at all levels within the framework of sustainable development,

Recognizing the validity and relevance of decisions adopted at the United Nations Conference on Environment and Development, particularly of Agenda 21 and its chapter 12, which provide a basis for combating desertification,

Reaffirming in this light the commitments of developed countries as contained in paragraph 13 of chapter 33 of Agenda 21,

Recalling General Assembly resolution 47/188 of 22 December 1992, particularly the priority in it prescribed for Africa, and all other relevant United Nations resolutions, decisions and programmes on desertification and drought, as well as relevant declarations by African countries and those from other regions,

Reaffirming the Rio Declaration on Environment and Development, which states, in its principle 2, that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Recognizing that national Governments play a critical role in combating desertification and mitigating the effects of drought and that progress in that respect depends on local implementation of action programmes in affected areas,

Recognizing also the importance and necessity of international cooperation and partnership in combating desertification and mitigating the effects of drought,

Recognizing the importance of the provision to affected developing countries, particularly in Africa, of effective means, *inter alia*, substantial financial resources, including new and additional funding, and access to technology, without which it will be difficult for them to implement fully their commitments under this Convention,

Expressing concern over the impact of desertification and drought on affected countries in Central Asia and the Transcaucasus,

Stressing the important role played by women in regions affected by desertification and/or drought, particularly in rural areas of developing countries, and the importance of ensuring the full participation of both men and women at all levels in programmes to combat desertification and mitigate the effects of drought,

Emphasizing the special role of non-governmental organizations and other major groups in programmes to combat desertification and mitigate the effects of drought,

Bearing in mind the relationship between desertification and other environmental problems of global dimension facing the international and national communities,

Bearing also in mind the contribution that combating desertification can make to achieving the objectives of the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity and other related environmental conventions,

Believing that strategies to combat desertification and mitigate the effects of drought will be most effective if they are based on sound systematic observation and rigorous scientific knowledge and if they are continuously re-evaluated,

Recognizing the urgent need to improve the effectiveness and coordination of international cooperation to facilitate the implementation of national plans and priorities,

Determined to take appropriate action in combating desertification and mitigating the effects of drought for the benefit of present and future generations,

Have agreed as follows:

Part I

Introduction

Article 1

Use of terms

For the purposes of this Convention:

(*a*) "Desertification" means land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities;

(*b*) "Combating desertification" includes activities which are part of the integrated development of land in arid, semi-arid and dry sub-humid areas for sustainable development which are aimed at:

(i) Prevention and/or reduction of land degradation;

(ii) Rehabilitation of partly degraded land; and

(iii) Reclamation of desertified land;

(*c*) "Drought" means the naturally occurring phenomenon that exists when precipitation has been significantly below normal recorded levels, causing serious hydrological imbalances that adversely affect land resource production systems;

(*d*) "Mitigating the effects of drought" means activities related to the prediction of drought and intended to reduce the vulnerability of society and natural systems to drought as it relates to combating desertification;

(*e*) "Land" means the terrestrial bio-productive system that comprises soil, vegetation, other biota, and the ecological and hydrological processes that operate within the system;

(*f*) "Land degradation" means reduction or loss, in arid, semi-arid and dry sub-humid areas, of the biological or economic productivity and complexity of

rainfed cropland, irrigated cropland, or range, pasture, forest and woodlands resulting from land uses or from a process or combination of processes, including processes arising from human activities and habitation patterns, such as:

(i) Soil erosion caused by wind and/or water;

(ii) Deterioration of the physical, chemical and biological or economic properties of soil; and

(iii) Long-term loss of natural vegetation;

(*g*) "Arid, semi-arid and dry sub-humid areas" means areas, other than polar and sub-polar regions, in which the ratio of annual precipitation to potential evapotranspiration falls within the range from 0.05 to 0.65;

(*h*) "Affected areas" means arid, semi-arid and/or dry sub-humid areas affected or threatened by desertification;

(*i*) "Affected countries" means countries whose lands include, in whole or in part, affected areas;

(*j*) "Regional economic integration organization" means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention;

(*k*) "Developed country Parties" means developed country Parties and regional economic integration organizations constituted by developed countries.

Article 2

OBJECTIVE

1. The objective of this Convention is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 21, with a view to contributing to the achievement of sustainable development in affected areas.

2. Achieving this objective will involve long-term integrated strategies that focus simultaneously, in affected areas, on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level.

Article 3

PRINCIPLES

In order to achieve the objective of this Convention and to implement its provisions, the Parties shall be guided, *inter alia*, by the following:

(*a*) The Parties should ensure that decisions on the design and implementation of programmes to combat desertification and/or mitigate the effects of drought are taken with the participation of populations and local communities

and that an enabling environment is created at higher levels to facilitate action at national and local levels;

(*b*) The Parties should, in a spirit of international solidarity and partnership, improve cooperation and coordination at subregional, regional and international levels, and better focus financial, human, organizational and technical resources where they are needed;

(*c*) The Parties should develop, in a spirit of partnership, cooperation among all levels of government, communities, non-governmental organizations and landholders to establish a better understanding of the nature and value of land and scarce water resources in affected areas and to work towards their sustainable use; and

(*d*) The Parties should take into full consideration the special needs and circumstances of affected developing country Parties, particularly the least developed among them.

Part II

General Provisions

Article 4

General obligations

1. The Parties shall implement their obligations under this Convention, individually or jointly, either through existing or prospective bilateral and multilateral arrangements or a combination thereof, as appropriate, emphasizing the need to coordinate efforts and develop a coherent long-term strategy at all levels.

2. In pursuing the objective of this Convention, the Parties shall:

(*a*) Adopt an integrated approach addressing the physical, biological and socio-economic aspects of the processes of desertification and drought;

(*b*) Give due attention, within the relevant international and regional bodies, to the situation of affected developing country Parties with regard to international trade, marketing arrangements and debt with a view to establishing an enabling international economic environment conducive to the promotion of sustainable development;

(*c*) Integrate strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought;

(*d*) Promote cooperation among affected country Parties in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought;

(*e*) Strengthen subregional, regional and international cooperation;

(*f*) Cooperate within relevant intergovernmental organizations;

(*g*) Determine institutional mechanisms, if appropriate, keeping in mind the need to avoid duplication; and

(*h*) Promote the use of existing bilateral and multilateral financial mechanisms and arrangements that mobilize and channel substantial financial resources to affected developing country Parties in combating desertification and mitigating the effects of drought.

3. Affected developing country Parties are eligible for assistance in the implementation of the Convention.

Article 5

Obligations of affected country Parties

In addition to their obligations pursuant to article 4, affected country Parties undertake to:

(*a*) Give due priority to combating desertification and mitigating the effects of drought, and allocate adequate resources in accordance with their circumstances and capabilities;

(*b*) Establish strategies and priorities, within the framework of sustainable development plans and/or policies, to combat desertification and mitigate the effects of drought;

(*c*) Address the underlying causes of desertification and pay special attention to the socio-economic factors contributing to desertification processes;

(*d*) Promote awareness and facilitate the participation of local populations, particularly women and youth, with the support of non-governmental organizations, in efforts to combat desertification and mitigate the effects of drought; and

(*e*) Provide an enabling environment by strengthening, as appropriate, relevant existing legislation and, where they do not exist, enacting new laws and establishing long-term policies and action programmes.

Article 6

Obligations of developed country Parties

In addition to their general obligations pursuant to article 4, developed Country Parties undertake to:

(*a*) Actively support, as agreed, individually or jointly, the efforts of affected developing country Parties, particularly those in Africa, and the least developed countries, to combat desertification and mitigate the effects of drought;

(*b*) Provide substantial financial resources and other forms of support to assist affected developing country Parties, particularly those in Africa, effectively to develop and implement their own long-term plans and strategies to combat desertification and mitigate the effects of drought;

(*c*) Promote the mobilization of new and additional funding pursuant to article 20, paragraph 2(b);

(*d*) Encourage the mobilization of funding from the private sector and other non-governmental sources; and

(*e*) Promote and facilitate access by affected country Parties, particularly affected developing country Parties, to appropriate technology, knowledge and know-how.

Article 7

PRIORITY FOR AFRICA

In implementing this Convention, the Parties shall give priority to affected African country Parties, in the light of the particular situation prevailing in that region, while not neglecting affected developing country Parties in other regions.

Article 8

RELATIONSHIP WITH OTHER CONVENTIONS

1. The Parties shall encourage the coordination of activities carried out under this Convention and, if they are Parties to them, under other relevant international agreements, particularly the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, in order to derive maximum benefit from activities under each agreement while avoiding duplication of effort. The Parties shall encourage the conduct of joint programmes, particularly in the fields of research, training, systematic observation and information collection and exchange, to the extent that such activities may contribute to achieving the objectives of the agreements concerned.

2. The provisions of this Convention shall not affect the rights and obligations of any Party deriving from a bilateral, regional or international agreement into which it has entered prior to the entry into force of this Convention for it.

Part III

ACTION PROGRAMMES, SCIENTIFIC AND TECHNICAL COOPERATION AND SUPPORTING MEASURES

SECTION 1. ACTION PROGRAMMES

Article 9

BASIC APPROACH

1. In carrying out their obligations pursuant to article 5, affected developing country Parties and any other affected country Party in the framework of its regional implementation annex or, otherwise, that has notified the programme, shall, as appropriate, prepare, make public and implement national action programmes, utilizing and building, to the extent possible, on existing relevant successful plans and programmes, and subregional and regional action programmes, as the central element of the strategy to combat desertification and mitigate the effects of drought.

Such programmes shall be updated through a continuing participatory process on the basis of lessons from field action, as well as the results of research. The preparation of national action programmes shall be closely interlinked with other efforts to formulate national policies for sustainable development.

2. In the provision by developed country Parties of different forms of assistance under the terms of article 6, priority shall be given to supporting, as agreed, national, subregional and regional action programmes of affected developing country Parties, particularly those in Africa, either directly or through relevant multilateral organizations or both.

3. The Parties shall encourage organs, funds and programmes of the United Nations system and other relevant intergovernmental organizations, academic institutions, the scientific community and non-governmental organizations in a position to cooperate, in accordance with their mandates and capabilities, to support the elaboration, implementation and follow-up of action programmes.

Article 10

National action programmes

1. The purpose of national action programmes is to identify the factors contributing to desertification and practical measures necessary to combat desertification and mitigate the effects of drought.

2. National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, *inter alia*:

(*a*) Incorporate long-term strategies to combat desertification and mitigate the effects of drought, emphasize implementation and be integrated with national policies for sustainable development;

(*b*) Allow for modifications to be made in response to changing circumstances and be sufficiently flexible at the local level to cope with different socio-economic, biological and geophysical conditions;

(*c*) Give particular attention to the implementation of preventive measures for lands that are not yet degraded or which are only slightly degraded;

(*d*) Enhance national climatological, meteorological and hydrological capabilities and the means to provide for drought early warning;

(*e*) Promote policies and strengthen institutional frameworks which develop cooperation and coordination, in a spirit of partnership, between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology;

(*f*) Provide for effective participation at the local, national and regional levels of non-governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes; and

(*g*) Require regular review of, and progress reports on, their implementation.

3. National action programmes may include, *inter alia*, some or all of the following measures to prepare for and mitigate the effects of drought:

(*a*) Establishment and/or strengthening, as appropriate, of early warning systems, including local and national facilities and joint systems at the subregional and regional levels, and mechanisms for assisting environmentally displaced persons;

(*b*) Strengthening of drought preparedness and management, including drought contingency plans at the local, national, subregional and regional levels, which take into consideration seasonal to interannual climate predictions;

(*c*) Establishment and/or strengthening, as appropriate, of food security systems, including storage and marketing facilities, particularly in rural areas;

(*d*) Establishment of alternative livelihood projects that could provide incomes in drought prone areas; and

(*e*) Development of sustainable irrigation programmes for both crops and livestock.

4. Taking into account the circumstances and requirements specific to each affected country Party, national action programmes include, as appropriate, *inter alia*, measures in some or all of the following priority fields as they relate to combating desertification and mitigating the effects of drought in affected areas and to their populations: promotion of alternative livelihoods and improvement of national economic environments with a view to strengthening programmes aimed at the eradication of poverty and at ensuring food security, demographic dynamics, sustainable management of natural resources, sustainable agricultural practices, development and efficient use of various energy sources, institutional and legal frameworks, strengthening of capabilities for assessment and systematic observation, including hydrological and meteorological services, and capacity building, education and public awareness.

Article 11

SUBREGIONAL AND REGIONAL ACTION PROGRAMMES

Affected country Parties shall consult and cooperate to prepare, as appropriate, in accordance with relevant regional implementation annexes, subregional and/or regional action programmes to harmonize, complement and increase the efficiency of national programmes. The provisions of article 10 shall apply *mutatis mutandis* to subregional and regional programmes. Such cooperation may include agreed joint programmes for the sustainable management of transboundary natural resources, scientific and technical cooperation, and strengthening of relevant institutions.

Article 12

INTERNATIONAL COOPERATION

Affected country Parties, in collaboration with other Parties and the international community, should cooperate to ensure the promotion of an enabling international environment in the implementation of the Convention. Such cooperation should also cover fields of technology transfer ass well as scientific research and development, information collection and dissemination and financial resources.

Article 13

SUPPORT FOR THE ELABORATION AND IMPLEMENTATION OF ACTION PROGRAMMES

1. Measures to support action programmes pursuant to article 9 include, *inter alia*:

(*a*) Financial cooperation to provide predictability for action programmes, allowing for necessary long-term planning;

(*b*) Elaboration and use of cooperation mechanisms which better enable support at the local level, including action through non-governmental organizations, in order to promote the replicability of successful pilot programme activities where relevant;

(*c*) Increased flexibility in project design, funding and implementation in keeping with the experimental, iterative approach indicated for participatory action at the local community level; and

(*d*) As appropriate, administrative and budgetary procedures that increase the efficiency of cooperation and of support programmes.

2. In providing such support to affected developing country Parties, priority shall be given to African country Parties and to least developed country Parties.

Article 14

COORDINATION IN THE ELABORATION AND IMPLEMENTATION OF ACTION PROGRAMMES

1. The Parties shall work closely together, directly and through relevant intergovernmental organizations, in the elaboration and implementation of action programmes.

2. The Parties shall develop operational mechanisms, particularly at the national and field levels, to ensure the fullest possible coordination among developed country Parties, developing country Parties and relevant intergovernmental and non-governmental organizations, in order to avoid duplication, harmonize interventions and approaches, and maximize the impact of assistance. In affected developing country Parties, priority will be given to coordinating activities related to international cooperation in order to maximize the efficient use of resources, to ensure responsive assistance, and to facilitate the implementation of national action programmes and priorities under this Convention.

Article 15

REGIONAL IMPLEMENTATION ANNEXES

Elements for incorporation in action programmes shall be selected and adapted to the socio-economic, geographical and climatic factors applicable to affected country Parties or regions, as well as to their level of development. Guidelines for the preparation of action programmes and their exact focus and content for particular subregions and regions are set out in the regional implementation annexes.

SECTION 2. SCIENTIFIC AND TECHNICAL COOPERATION

Article 16

INFORMATION COLLECTION, ANALYSIS AND EXCHANGE

The Parties agree, according to their respective capabilities, to integrate and coordinate the collection, analysis and exchange of relevant short-term and long-term data and information to ensure systematic observation of land degradation in affected areas and to understand better and assess the processes and effects of drought and desertification. This would help accomplish, *inter alia*, early warning and advance planning for periods of adverse climatic variation in a form suited for practical application by users at all levels, including especially local populations. To this end, they shall, as appropriate:

(*a*) Facilitate and strengthen the functioning of the global network of institutions and facilities for the collection, analysis and exchange of information, as well as for systematic observation at all levels, which shall, *inter alia*:

(i) Aim to use compatible standards and systems;

(ii) Encompass relevant data and stations, including in remote areas;

(iii) Use and disseminate modern technology for data collection, transmission and assessment on land degradation; and

(iv) Link national, subregional and regional data and information centres more closely with global information sources;

(*b*) Ensure that the collection, analysis and exchange of information address the needs of local communities and those decision makers, with a view to resoling specific problems, and that local communities are involved in these activities;

(c) Support and further develop bilateral and multilateral programmes and projects aimed at defining, conducting, assessing and financing the collection, analysis and exchange of data and information, including, *inter alia*, integrated sets of physical, biological, social and economic indicators;

(*d*) Make full use of the expertise of competent intergovernmental and non-governmental organizations, particularly to disseminate relevant information and experiences among target groups in different regions;

(*e*) Give full weight to the collection, analysis and exchange of socio-economic data, and their integration with physical and biological data;

(*f*) Exchange and make fully, openly and promptly available information from all publicly available sources relevant to combating desertification and mitigating the effects of drought; and

(*g*) Subject to their respective national legislation and/or policies, exchange information on local and traditional knowledge, ensuring adequate protection for it and providing appropriate return from the benefits derived from it, on an equitable basis and on mutually agreed terms, to the local populations concerned.

Article 17

Research and development

1. The Parties undertake, according to their respective capabilities, to promote technical and scientific cooperation in the fields of combating desertification and mitigating the effects of drought through appropriate national, subregional, regional and international institutions. To this end, they shall support research activities that:

(*a*) Contribute to increased knowledge of the processes leading to desertification and drought and the impact of, and distinction between, causal factors, both natural and human, with a view to combating desertification and mitigating the effects of drought, and achieving improved productivity as well as sustainable use and management of resources;

(*b*) Respond to well-defined objectives, address the specific needs of local populations and lead to the identification and implementation of solutions that improve the living standards of people in affected areas;

(*c*) Protect, integrate, enhance and validate traditional and local knowledge, know-how and practices, ensuring, subject to their respective national legislation and/or policies, that the owners of that knowledge will directly benefit on an equitable basis and on mutually agreed terms from any commercial utilization of it or from any technological development derived from that knowledge;

(*d*) Develop and strengthen national, subregional and regional research capabilities in affected developing country Parties, particularly in Africa, including the development of local skills and the strengthening of appropriate capacities, especially in countries with a weak research base, giving particular attention to multidisciplinary and participative socio-economic research;

(*e*) Take into account, where relevant, the relationship between poverty, migration caused by environmental factors, and desertification;

(*f*) Promote the conduct of joint research programmes between national, subregional, regional and international research organizations, in both the public and private sectors, for the development of improved, affordable and accessible technologies for sustainable development through effective participation of local populations communities; and

(*g*) Enhance the availability of water resources in affected areas, by means of *inter alia*, cloud-seeding.

2. Research priorities for particular regions and subregions, reflecting different local conditions, should be included in action programmes. The Conference of the Parties shall review research priorities periodically on the advice of the Committee on Science and Technology.

Article 18

Transfer, acquisition, adaptation and development of technology

1. The Parties undertake, as mutually agreed and in accordance with their respective national legislation and/or policies, to promote, finance and/or facilitate the financing of the transfer, acquisition, adaptation and development of environmentally sound, economically viable and socially acceptable technologies relevant to combating desertification and/or mitigating the effects of drought, with a view to contributing to the achievement of sustainable development in affected areas. Such cooperation shall be conducted bilaterally or multilaterally, as appropriate, making full use of the expertise of intergovernmental and non-governmental organizations. The Parties shall, in particular:

(*a*) Fully utilize relevant existing national, subregional, regional and international information systems and clearing-houses for the dissemination of information on available technologies, their sources, their environmental risks and the broad terms under which they may be acquired;

(*b*) Facilitate access, in particular by affected developing country Parties, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights, to technologies most suitable to practical application for specific needs of local populations, paying special attention to the social, cultural, economic and environmental impact of such technology;

(*c*) Facilitate technology cooperation among affected country Parties through financial assistance or other appropriate means;

(*d*) Extend technology cooperation with affected developing country Parties, including, where relevant, joint ventures, especially to sectors which foster alternative livelihoods; and

(*e*) Take appropriate measures to create domestic market conditions and incentives, fiscal or otherwise, conducive to the development, transfer, acquisition and adaptation of suitable technology, knowledge, know-how and practices, including measures to ensure adequate and effective protection intellectual property rights.

2. The Parties shall, according to their respective capabilities, and subject to their respective national legislation and/or policies, protect, promote and use in particular relevant traditional and local technology, knowledge, know-how and practices and, to the end, they undertake to:

(*a*) Make inventories of such technology, knowledge, know-how and practices and their potential uses with the participation of local populations, and disseminate such information, where appropriate, in cooperation with relevant intergovernmental and non-governmental organizations;

(*b*) Ensure that such technology, knowledge, know-how and practices are adequately protected and that local populations benefit directly, on an equitable basis and as mutually agreed, from any commercial utilization of them or from any technological development derived therefrom;

(*c*) Encourage and actively support the improvement and dissemination of such technology, knowledge, know-how and practices or of the development of new technology based on them; and

(*d*) Facilitate, as appropriate, the adaptation of such technology, knowledge, know-how and practices to wide use and integrate them with modern technology, as appropriate.

SECTION 3. SUPPORTING MEASURES

Article 19

CAPACITY-BUILDING, EDUCATION AND PUBLIC AWARENESS

1. The Parties recognize the significance of capacity-building — that is to say, institution-building, training and development of relevant local and national capacities — in efforts to combat desertification and mitigate the effects of drought. They shall promote, as appropriate, capacity-building:

(*a*) Through the full participation at all levels of local people, particularly at the local level, especially women and youth, with the cooperation of non-governmental and local organizations;

(*b*) By strengthening training and research capacity at the national level in the field of desertification and drought;

(*c*) By establishing and/or strengthening support and extension services to disseminate relevant technology methods and techniques more effectively, and by training field agents and members of rural organizations in participatory approaches for the conservation and sustainable use of natural resources;

(*d*) By fostering the use and dissemination of the knowledge, know-how and practices of local people in technical cooperation programmes, wherever possible;

(*e*) By adapting, where necessary, relevant environmentally sound technology and traditional methods of agriculture and pastoralism to modern socio-economic conditions;

(*f*) By providing appropriate training and technology in the use of alternative energy sources, particularly renewable energy resources, aimed particularly at reducing dependence on wood for fuels;

(*g*) Through cooperation, as mutually agreed, to strengthen the capacity of affected developing country Parties to develop and implement programmes in the field of collection, analysis and exchange of information pursuant to article 16;

(*h*) Through innovative ways of promoting alternative livelihoods, including training in new skills;

(*i*) By training of decision makers, managers, and personnel who are responsible for the collection and analysis of data for the dissemination and use of early warning information on drought conditions and for food production;

(*j*) Through more effective operation of existing national institutions and legal frameworks and, where necessary, creation of new ones, along with strengthening of strategic planning and management; and

(*k*) By means of exchange visitor programmes to enhance capacity building in affected country Parties through a long-term, interactive process of learning and study.

2. Affected developing country Parties shall conduct, in cooperation with other Parties and competent intergovernmental and non-governmental organizations, as appropriate, an interdisciplinary review of available capacity and facilities at the local and national levels, and the potential for strengthening them.

3. The Parties shall cooperate with each other and through competent intergovernmental organizations, as well as with non-governmental organizations, in undertaking and supporting public awareness and educational programmes in both affected and, where relevant, unaffected country Parties to promote understanding of the causes and effects of desertification and drought and of the importance of meeting the objective of this Convention. To that end they shall:

(*a*) Organize awareness campaigns for the general public;

(*b*) Promote, on a permanent basis, access by the public to relevant information, and wide public participation in education and awareness activities;

(*c*) Encourage the establishment of associations that contribute to public awareness;

(*d*) Develop and exchange educational and public awareness material, where possible in local languages, exchange and second experts to train personnel of affected developing country Parties in carrying out relevant education and awareness programmes, and fully utilize relevant educational material available in competent international bodies;

(*e*) Assess educational needs in affected areas, elaborate appropriate school curricula and expand, as needed, educational and adult literacy programmes and opportunities for all, in particular for girls and women, on the identification, conservation and sustainable use and management of the natural resources of affected areas; and

(*f*) Develop interdisciplinary participatory programmes integrating desertification and drought awareness into educational systems and in non-formal, adult, distance and practical educational programmes.

4. The Conference of the Parties shall establish and/or strengthen networks of regional education and training centres to combat desertification and mitigate the effects of drought. These networks shall be coordinated by an institution created or designated for that purpose, in order to train scientific, technical and management personnel and to strengthen existing institutions responsible for education and training in affected country Parties, where appropriate, with a view to harmonizing

programmes and to organizing exchanges of experience among them. These networks shall cooperate closely with relevant intergovernmental and non-governmental organizations to avoid duplication of effort.

Article 20

FINANCIAL RESOURCES

1. Given the central importance of financing to the achievement of the objective of the Convention, the Parties, taking into account their capabilities, shall make every effort to ensure that adequate financial resources are available for programmes to combat desertification and mitigate the effects of drought.

2. In this connection, developed country Parties, while giving priority to affected African country Parties without neglecting affected developing country Parties in other regions, in accordance with article 7, undertake to:

(*a*) Mobilize substantial financial resources, including grants and concessional loans, in order to support the implementation of programmes to combat desertification and mitigate the effects of drought;

(*b*) Promote the mobilization of adequate, timely and predictable financial resources, including new and additional funding from the Global Environment Facility of the agreed incremental costs of those activities concerning desertification that relate to its four focal area, in conformity with the relevant provisions of the Instrument establishing the Global Environment Facility;

(*c*) Facilitate through international cooperation the transfer of technology, knowledge and know-how; and

(*d*) Explore, in cooperation with affected developing country Parties, innovative methods and incentives for mobilizing and channeling resources, including those of foundations, non-governmental organizations and other private sector entities, particularly debt swaps and other innovative means which increase financing by reducing the external debt burden of affected developing country Parties, particularly those in Africa.

3. Affected developing country Parties, taking into account their capabilities, undertake to mobilize adequate financial resources for the implementation of their national action programmes.

4. In mobilizing financial resources, the Parties shall seek full use and continued qualitative improvement of all national, bilateral and multilateral financing, and shall seek to involve private sector funding sources and mechanisms, using consortia, joint programmes and parallel financing, and shall seek to involve private sector funding sources and mechanisms, including those of non-governmental organizations. To this end, the Parties shall fully utilize the operational mechanisms developed pursuant to article 14.

5. In order to mobilize the financial resources necessary for affected developing country Parties to combat desertification and mitigate the effects of drought, the Parties shall:

(*a*) Rationalize and strengthen the management of resources already allocated for combating desertification and mitigating the effects of drought by using them more effectively and efficiently, assessing their successes and short-

comings, removing hindrances to their effective use and, where necessary, reorienting programmes in the light of the integrated long-term approach adopted pursuant to this Convention;

(*b*) Give due priority and attention within the governing bodies of multilateral financial institutions, facilities and funds, including regional development banks and funds, to supporting affected developing country Parties, particularly those in Africa, in activities which advance implementation of the Convention, notably action programmes they undertake in the framework of regional implementation annexes; and

(*c*) Examine ways in which regional and subregional cooperation can be strengthened to support efforts undertaken at the national level.

6. Other country Parties are encouraged to provide, on a voluntary basis, knowledge, know-how and techniques related to desertification and/or financial resources to affected developing country Parties.

7. The full implementation by affected developing country Parties, particularly those in Africa, of their obligations under the Convention will be greatly assisted by the fulfillment by developed country Parties of their obligations under the Convention, including in particular those regarding financial resources and transfer of technology. In fulfilling their obligations, developed country Parties should take fully into account that economic and social development and poverty eradication are the first priorities of affected developing country Parties, particularly those in Africa.

Article 21

Financial mechanisms

1. The Conference of the Parties shall promote the availability of financial mechanisms and shall encourage such mechanisms to seek to maximize the availability of funding for affected developing country Parties, particularly those in Africa, to implement the Convention. To this end, the Conference of the Parties shall consider for adoption, *inter alia*, approaches and policies that:

(*a*) Facilitate the provision of necessary funding at the national, subregional, regional and global levels for activities pursuant to relevant provisions of the Convention;

(*b*) Promote multiple-source funding approaches, mechanisms and arrangements and their assessment, consistent with article 20;

(*c*) Provide on a regular basis, to interested Parties and relevant intergovernmental and non-governmental organizations, information on available sources of funds and on funding patterns in order to facilitate coordination among them;

(*d*) Facilitate the establishment, as appropriate, of mechanism, such as national desertification funds, including those involving the participation of non-governmental organizations, to channel financial resources rapidly and efficiently to the local level in affected developing country Parties; and

(*e*) Strengthen existing funds and financial mechanisms at the subregional and regional levels, particularly in Africa, to support more effectively the implementation of the Convention.

2. The Conference of the Parties shall also encourage the provision, through various mechanisms within the United Nations system and through multilateral financial institutions, of support at the national, subregional and regional levels to activities that enable developing country Parties to meet their obligations under the Convention.

3. Affected developing country Parties shall utilize, and where necessary, establish and/or strengthen, national coordinating mechanisms, integrated in national development programmes, that would ensure the efficient use of all available financial resources. They shall also utilize participatory processes involving non-governmental organizations, local groups and the private sector, in raising funds, in elaborating as well as implementing programmes and in assuring access to funding by groups at the local level. These actions can be enhanced by improved coordination and flexible programming on the part of those providing assistance.

4. In order to increase the effectiveness and efficiency of existing financial mechanisms, a Global Mechanism to promote actions leading to the mobilization and channeling of substantial financial resources, including for the transfer of technology, on a grant basis, and/or on concessional or other terms, to affected developing country Parties, is hereby established. This Global Mechanism shall function under the authority and guidance of the Conference of the Parties and be accountable to it.

5. The Conference of the Parties shall identify, at its first ordinary session, an organization to house the Global Mechanism. The Conference of the Parties and the organization it has identified shall agree upon modalities for this Global Mechanism to ensure, *inter alia*, that such Mechanism:

(*a*) Identifies and draws up an inventory of relevant bilateral and multilateral cooperation programmes that are available to implement the Convention;

(*b*) Provides advice, on request, to Parties on innovative methods of financing and sources of financial assistance and on improving the coordination of cooperation activities at the national level;

(*c*) Provides interested Parties and relevant intergovernmental and non-governmental organizations with information on available sources of funds and on funding patterns in order to facilitate coordination among them; and

(*d*) Reports to the Conference of the Parties, beginning at its second ordinary session, on its activities.

6. The Conference of the Parties shall, at its first session, make appropriate arrangements with the organization it has identified to house the Global Mechanism for the administrative operations of such Mechanism, drawing to the extent possible on existing budgetary and human resources.

7. The Conference of the Parties shall, at its third ordinary session, review the policies, operational modalities and activities of the Global Mechanism accountable to it pursuant to paragraph 4, taking into account the provisions of article 7. On the basis of this review, it shall consider and take appropriate action.

Part IV

Institutions

Article 22

Conference of the Parties

1. A Conference of the Parties is hereby established.

2. The Conference of the Parties is the supreme body of the Convention. It shall make, within its mandate, the decisions necessary to promote its effective implementation. In particular, it shall:

(*a*) Regularly review the implementation of the Convention and the functioning of its institutional arrangements in the light of the experience gained at the national, subregional, regional and international levels and on the basis of the evolution of scientific and technological knowledge;

(*b*) Promote and facilitate the exchange of information on measures adopted by the Parties, and determine the form and timetable for transmitting the information to be submitted pursuant to article 26, review the reports and make recommendations on them;

(*c*) Establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;

(*d*) Review reports submitted by its subsidiary bodies and provide guidance to them;

(*e*) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and any subsidiary bodies;

(*f*) Adopt amendments to the Convention pursuant to articles 30 and 31;

(*g*) Approve a programme and budget for its activities, including those of its subsidiary bodies, and undertake necessary arrangements for their financing;

(*h*) As appropriate, seek the cooperation of, and utilize the services of and information provided by, competent bodies or agencies, whether national or international, intergovernmental or non-governmental;

(*i*) Promote and strengthen the relationship with other relevant conventions while avoiding duplication of effort; and

(*j*) Exercise such other functions as may be necessary for the achievement of the objective of the Convention.

3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure, by consensus, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.

4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in article 35 and shall take place not later than one year after the date of entry into force of the Convention. Unless otherwise decided by the Conference of the Parties, the second, third and fourth ordinary sessions shall be held yearly, and thereafter, ordinary sessions shall be held every two years.

5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be decided either by the Conference of the Parties in ordinary session or at the written request of any Party, provided that, within three months of the request being communicated to the Parties by the Permanent Secretariat, it is supported by at least one third of the Parties.

6. At each ordinary session, the Conference of the Parties shall elect a Bureau. The structure and functions of the Bureau shall be determined in the rules of procedure. In appointing the Bureau, due regard shall be paid to the need to ensure equitable geographical distribution and adequate representation of affected country Parties, particularly those in Africa.

7. The United Nations, its specialized agencies and any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the Permanent Secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

8. The Conference of the Parties may request competent national and international organizations which have relevant expertise to provide it with information relevant to article 16, paragraph (g), article 17, paragraph 1(c), and article 18, paragraph 2(b).

Article 23

Permanent Secretariat

1. A Permanent Secretariat is hereby established.

2. The functions of the Permanent Secretariat shall be:

(*a*) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;

(*b*) To compile and transmit reports submitted to it;

(*c*) To facilitate assistance to affected developing country Parties, on request, particularly those in Africa, in the compilation and communication of information required under the Convention;

(*d*) To coordinate its activities with the secretariats of other relevant international bodies and conventions;

(*e*) To enter, under the guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(*f*) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties; and

(*g*) To perform such other secretariat functions as may be determined by the Conference of the Parties.

3. The Conference of the Parties, at its first session, shall designate a Permanent Secretariat and make arrangements for its functioning.

Article 24

COMMITTEE ON SCIENCE AND TECHNOLOGY

1. A Committee on Science and Technology is hereby established as a subsidiary body of the Conference of the Parties to provide it with information and advice on scientific and technological matters relating to combating desertification and mitigating the effects of drought. The Committee shall meet in conjunction with the ordinary sessions of the Conference of the Parties and shall be multidisciplinary and open to the participation of all Parties. It shall be composed of government representatives competent in the relevant fields of expertise. The Conference of the Parties shall decide, at its first session, on the terms of reference of the Committee.

2. The Conference of the Parties shall establish and maintain a roster of independent experts with expertise and experience in the relevant fields. The roster shall be based on nominations received in writing from the Parties, taking into account the need for a multidisciplinary approach and broad geographical representation.

3. The Conference of the Parties may, as necessary, appoint ad hoc panels to provide it, through the Committee, with information and advice on specific issues regarding the state of the art in fields of science and technology relevant to combating desertification and mitigating the effects of drought. These panels shall be composed of experts whose names are taken from the roster, taking into account the need for a multidisciplinary approach and broad geographical representation. These experts shall have scientific backgrounds and field experience and shall be appointed by the Conference of the Parties on the recommendation of the Committee. The Conference of the Parties shall decide on the terms of reference and the modalities of work of these panels.

Article 25

NETWORKING OF INSTITUTIONS, AGENCIES AND BODIES

1. The Committee on Science and Technology shall, under the supervision of the Conference of the Parties, make provision for the undertaking of a survey and evaluation of the relevant existing networks, institutions, agencies and bodies willing to become units of a network. Such a network shall support the implementation of the Convention.

2. On the basis of the results of the survey and evaluation referred to in paragraph 1, the Committee on Science and Technology shall make recommendations to the Conference of the Parties on ways and means to facilitate and strengthen networking of the units at the local, national and other levels, with a view to ensuring that the thematic needs set out in articles 16 to 19 are addressed.

3. Taking into account these recommendations, the Conference of the Parties shall:

(*a*) Identify those national, subregional, regional and international units that are most appropriate for networking, and recommend operational procedures, and a time frame, for them; and

(*b*) Identify the units best suited to facilitating and strengthening such networking at all levels.

Part V

PROCEDURES

Article 26

COMMUNICATION OF INFORMATION

1. Each Party shall communicate to the Conference of the Parties for consideration at its ordinary sessions, through the Permanent Secretariat, reports on the measures which it has taken for the implementation of the Convention. The Conference of the Parties shall determine the timetable for submission and the format of such reports.

2. Affected country Parties shall provide a description of the strategies established pursuant to article 5 and of any relevant information on their implementation.

3. Affected country Parties which implement action programmes pursuant to articles 9 to 15 shall provide a detailed description of the programmes and of their implementation.

4. Any group of affected country Parties may make a joint communication on measures taken at the subregional and/or regional levels in the framework of action programmes.

5. Developed country Parties shall report on measures taken to assist in the preparation and implementation of action programmes, including information on the financial resources they have provided, or are providing, under the Convention.

6. Information communicated pursuant to paragraphs 1 to 4 shall be transmitted by the Permanent Secretariat as soon as possible to the Conference of the Parties and to any relevant subsidiary body.

7. The Conference of the Parties shall facilitate the provision to affected developing countries, particularly those in Africa, on request, of technical and financial support in compiling and communicating information in accordance with this article, as well as identifying the technical and financial needs associated with action programmes.

Article 27

MEASURES TO RESOLVE QUESTIONS ON IMPLEMENTATION

The Conference of the Parties shall consider and adopt procedures and institutional mechanisms for the resolution of questions that may arise with regard to the implementation of the Convention.

Article 28

SETTLEMENT OF DISPUTES

1. Parties shall settle any dispute between them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving, or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect

of any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(*a*) Arbitration in accordance with a procedure adopted by the Conference of the Parties in an annex as soon as practicable;

(*b*) Submission of the dispute to the International Court of Justice.

3. A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2(a).

4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

5. The expiry of a declaration, a notice of revocation or a new declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the Parties to the dispute otherwise agree.

6. If the Parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2 and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted conciliation at the request of any Part to the dispute, in accordance with procedure adopted by the Conference of the Parties in an annex as soon as practicable.

Article 29

Status of annexes

1. Annexes form an integral part of the Convention and, unless expressly provided otherwise, a reference to the Convention also constitutes a reference to its Annexes.

2. The Parties shall interpret the provisions of the Annexes in a manner that is in conformity with their rights and obligations under the articles of this Convention.

Article 30

Amendments to the Convention

1. Any Party may propose amendments to the Convention.

2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Permanent Secretariat at least six months before the meeting at which it is proposed for adoption. The Permanent Secretariat shall also communicate proposed amendments to the signatories to the Convention.

3. The Parties shall make every effort to reach agreement on any proposed amendment to the 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 two-thirds majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the Permanent Secretariat to the depositary, who shall circulate it to all Parties for their ratification, acceptance, approval or accession.

4. Instruments of ratification, acceptance, approval or accession in respect of an amendment shall be deposited with the depositary. An amendment adopted pursuant to paragraph 3 shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the depositary of an instrument of ratification, acceptance, approval or accession by at least two thirds of the Parties to the Convention which were Parties at the time of the adoption of the amendment.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the depositary its instrument of ratification, acceptance or approval of, or accession to the said amendment.

6. For the purposes of this article and article 31, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 31

Adoption and amendment of annexes

1. Any additional annex to the Convention and any amendment to an annex shall be proposed and adopted in accordance with the procedure for amendment of the Convention set forth in article 30, provided that, in adopting an additional regional implementation annex or amendment to any regional implementation annex, the majority provided for in that article shall include a two-thirds majority vote of the Parties of the region concerned present and voting. The adoption or amendment of an annex shall be communicated by the depositary to all Parties.

2. An annex, other than an additional regional implementation annex, or an amendment to an annex, other than an amendment to any regional implementation annex, that has been adopted in accordance with paragraph 1, shall enter into force for all Parties to the Convention six months after the date of communication by the depositary to such Parties of the adoption of such annex or amendment, except for those Parties that have notified the Depositary in writing within that period of their non-acceptance of such annex or amendment. Such annex or amendment shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the depositary.

3. An additional regional implementation annex or amendment to any regional implementation annex that has been adopted in accordance with paragraph 1, shall enter into force for all Parties to the convention six months after the date of the communication by the depositary to such Parties of the adoption of such annex or amendment, except with respect to:

(*a*) Any Party that has notified the depositary in writing, within such six month period, of its non-acceptance of that additional regional implementation annex or of the amendment to the regional implementation annex, in which case such annex or amendment shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the depositary; and

(*b*) Any Party that has made a declaration with respect to additional regional implementation annexes or amendments to regional implementation annexes in accordance with article 34, paragraph 4, in which case any such annex

or amendment shall enter into force for such a Party on the ninetieth day after the date of deposit with the depositary of its instrument of ratification, acceptance, approval or accession with respect to such annex or amendment.

4. If the adoption of an annex or an amendment to an annex involves and amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

Article 32

RIGHT TO VOTE

1. Except as provided for in paragraph 2, each Party to the Convention shall have one vote.

2. 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 that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Part VI

FINAL PROVISIONS

Article 33

SIGNATURE

This Convention shall be opened for signature at Paris, on …, 1994, by States Members of the United Nations or any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations. It shall remain open for signature, thereafter, at the United Nations Headquarters in New York until …

[DATE TO BE COMMUNICATED BY THE FRENCH AUTHORITIES]

Article 34

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

2. Any regional economic integration organization which becomes a Party to the Convention without any of its member States being a Party to the Convention shall be bound by all the obligations under the Convention. Where one or more member States of such an organization are also Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. They shall also promptly inform the depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

4. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with respect to it, any additional regional implementation annex or any amendment to any regional implementation annex shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.

Article 35

Interim arrangements

The secretariat functions referred to in article 23 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 47/188 of 22 December 1992, until the completion of the first session of the Conference of the Parties.

Article 36

Entry into force

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to the Convention after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

Article 37

Reservations

No reservations may be made to this Convention.

Article 38

Withdrawal

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 39

DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of the Convention.

Article 40

AUTHENTIC TEXTS

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed the present Convention.

DONE at Paris, this 17th day of June one thousand nine hundred and ninety-four.

ANNEX I

Regional Implementation Annex for Africa

Article 1

SCOPE

This annex applies to Africa, in relation to each Party and in conformity with the Convention, in particular its article 7, for the purpose of combating desertification and/or mitigating the effects of drought in its arid, semi-arid and dry sub-humid areas.

Article 2

PURPOSE

The purpose of this annex, at the national, subregional and regional levels in Africa and in the light of its particular conditions, is to:

(*a*) Identify measures and arrangements, including the nature and processes of assistance provided by developed country Parties, in accordance with the relevant provisions of the Convention;

(*b*) Provide for the efficient and practical implementation of the Convention to address conditions specific to Africa; and

(*c*) Promote processes and activities relating to combating desertification and/or mitigating the effects of drought within the arid, semi-arid and dry sub-humid areas of Africa.

Article 3

PARTICULAR CONDITIONS OF THE AFRICAN REGION

In carrying out their obligations under the Convention, the Parties shall in the implementation of this annex, adopt a basic approach that takes into consideration the following particular conditions of Africa:

(*a*) The high proportion of arid, semi-arid and dry sub-humid areas;

(*b*) The substantial number of countries and populations adversely affected by desertification and by the frequent recurrence of severe drought;

(*c*) The large number of affected countries that are landlocked;

(*d*) The widespread poverty prevalent in most affected countries, the large number of least developed countries among them, and their need for significant amounts of external assistance, in the form of grants and loans on concessional terms, to pursue their development objectives;

(*e*) The difficult socio-economic conditions, exacerbated by deteriorating and fluctuating terms of trade, external indebtedness and political instability, which induce internal, regional and international migrations;

(*f*) The heavy reliance of populations on natural resources for subsistence which, compounded by the effects of demographic trends and factors, a weak technological base and unsustainable production practices, contributes to serious resource degradation;

(*g*) The insufficient institutional and legal frameworks, the weak infrastructural base and the insufficient scientific, technical and educational capacity, leading to substantial capacity building requirements; and

(*h*) The central role of actions to combat desertification and/or mitigate the effects of drought in the national development priorities of affected African countries.

Article 4

COMMITMENTS AND OBLIGATIONS OF AFRICAN COUNTRY PARTIES

1. In accordance with their respective capabilities, African country Parties undertake to:

(*a*) Adopt the combating of desertification and/or the mitigation of the effects of drought as a central strategy in their efforts to eradicate poverty;

(*b*) Promote regional cooperation and integration, in a spirit of solidarity and partnership based on mutual interest, in programmes and activities to combat desertification and/or mitigate the effects of drought;

(*c*) Rationalize and strengthen existing institutions concerned with desertification and drought and involve other existing institutions, as appropriate, in order to make them more effective and to ensure more efficient use of resources;

(*d*) Promote the exchange of information on appropriate technology, knowledge, know-how and practices between and among them; and

(*e*) Develop contingency plans for mitigating the effects of drought in areas degraded by desertification and/or drought.

2. Pursuant to the general and specific obligations set out in articles 4 and 5 of the Convention, affected African country Parties shall aim to:

(*a*) Make appropriate financial allocations from their national budgets consistent with national conditions and capabilities and reflecting the new priority Africa has accorded to the phenomenon of desertification and/or drought;

(*b*) Sustain and strengthen reforms currently in progress towards greater decentralization and resource tenure as well as reinforce participation of local populations and communities; and

(*c*) Identify and mobilize new and additional national financial resources, facilities to mobilize domestic financial resources.

Article 5

COMMITMENTS AND OBLIGATIONS OF DEVELOPED COUNTRY PARTIES

1. In fulfilling their obligations pursuant to articles 4, 6 and 7 of the Convention, developed country Parties shall give priority to affected African country Parties and, in this context, shall:

(*a*) Assist them to combat desertification and/or mitigate the effects of drought by, *inter alia*, providing and/or facilitating access to financial and/or other resources, and promoting, financing and/or facilitating the financing of the transfer, adaptation and access to appropriate environmental technologies and know-how, as mutually agreed and in accordance with national policies, taking into account their adoption of poverty eradication as a central strategy;

(*b*) Continue to allocate significant resources and/or increase resources to combat desertification and/or mitigate the effects of drought; and

(*c*) Assist them in strengthening capacities to enable them to improve their institutional frameworks, as well as their scientific and technical capabilities, information collection and analysis, and research and development for the purpose of combating desertification and/or mitigating the effects of drought.

2. Other country Parties may provide, on a voluntary basis, technology, knowledge and know-how relating to desertification and/or financial resources, to affected African country Parties. The transfer of such knowledge, know-how and techniques is facilitated by international cooperation.

Article 6

STRATEGIC PLANNING FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

1. National action programmes shall be a central and integral part of a broader process of formulating national policies for the sustainable development of affected African country Parties.

2. A consultative and participatory process involving appropriate levels of government, local populations, communities and none-governmental organizations shall be undertaken to provide guidance on a strategy with flexible planning to allow maximum participation from local populations and communities. As appropriate, bilateral and multilateral assistance agencies may be involved in this process at the request of an affected African country Party.

Article 7

TIMETABLE FOR PREPARATION OF ACTION PROGRAMMES

Pending entry into force of this Convention, the African country Parties, in cooperation with other members of the international community, as appropriate, shall, to the extent possible, provisionally apply those provisions of the Convention relating to the preparation of national, subregional and regional action programmes.

Article 8

CONTENT OF NATIONAL ACTION PROGRAMMES

1. Consistent with article 10 of the Convention, the overall strategy of national action programmes shall emphasize integrated local development programmes for affected areas, based on participatory mechanisms and on integration of strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought. The programmes shall aim at strengthening the capacity of local authorities and ensuring the active involvement of local populations, communities and groups, with emphasis on education and training, mobilization of non-governmental organizations with proven expertise and strengthening of decentralized governmental structures.

2. National action programmes shall, as appropriate, include the following general features:

(*a*) The use, in developing and implementing national action programmes, of past experiences in combating desertification and/or mitigating the effects of drought, taking into account social, economic and ecological conditions;

(*b*) The identification of factors contributing to desertification and/or drought and the resources and capacities available and required, and the setting up of appropriate policies and institutional and other responses and measures necessary to combat those phenomena and/or mitigate their effects; and

(*c*) The increase in participation of local populations and communities, including women, farmers and pastoralists, and delegation to them of more responsibility for management.

3. National action programmes shall also, as appropriate, include the following:

(*a*) Measures to improve the economic environment with a view to eradicating poverty:

(i) Increasing incomes and employment opportunities, especially for the poorest members of the community, by:

— Developing markets for farm and livestock products;

— Creating financial instruments suited to local needs;

— Encouraging diversification in agriculture and the setting-up of agricultural enterprises; and

— Developing economic activities of a para-agricultural or non-agricultural type;

(ii) Improving the long-term prospects of rural economies by the creation of:

— Incentives for productive investment and access to the means of production; and

— Price and tax policies and ocmmercial practices that promote growth;

(iii) Defining and applying population and migration policies to reduce population pressure on land; and

(iv) Promoting the use of drought resistant crops and the application of integrated dry-land farming systems for food security purposes;

(*b*) Measure to conserve natural resources:

(i) Ensuring integrated and sustainable management of natural resources, including:

— Agricultural land and pastoral land;

— Vegetation cover and wildlife;

— Forests;

— Water resources; and

— Biological diversity;

(ii) Training with regard to, and strengthening, public awareness and environmental education campaigns and disseminating knowledge of techniques relating to the sustainable management of natural resources; and

(iii) Ensuring the development and efficient use of diverse energy sources, the promotion of alternative sources of energy, particularly solar energy, wind energy and bio-gas, and specific arrangements for the transfer, acquisition and adaptation of relevant technology to alleviate the pressure on fragile natural resources;

(*c*) Measures to improve institutional organization:

(i) Defining the roles and responsibilities of central government and local authorities within the framework of a land use planning policy;

(ii) Encouraging a policy of active decentralization, devolving responsibility for management and decision-making to local authorities, and encouraging initiatives and the assumption of responsibility by local communities and the establishment of local structures; and

(iii) Adjusting, as appropriate, the institutional and regulatory framework of natural resource management to provide security of land tenure for local populations;

(*d*) Measures to improve knowledge of desertification:

(i) Promoting research and the collection, processing and exchange of information on the scientific, technical and socio-economic aspects of desertification;

(ii) Improving national capabilities in research and in the collection, processing, exchange and analysis of information so as to increase understanding and to translate the results of the analysis into operational terms; and

(iii) Encouraging the medium and long term study of:

— Socio-economic and cultural trends in affected areas;

— Qualitative and quantitative trends in natural resources; and

— The interaction between climate and desertification; and

(*e*) Measures to monitor and assess the effects of drought:

(i) Developing strategies to evaluate the impacts of natural climate variability on regional drought and desertification and/or to utilize predictions of climate variability on seasonal to interannual time scales in efforts to mitigate the effects of drought;

(ii) Improving early warning and response capacity, efficiently managing emergency relief and food aid, and improving food stocking and distribution systems, cattle protection schemes and public works and alternative livelihoods for drought prone areas; and

(iii) Monitoring and assessing ecological degradation to provide reliable and timely information on the process and dynamics of resource degradation in order to facilitate better policy formulations and responses.

Article 9

PREPARATION OF NATIONAL ACTION PROGRAMMES AND IMPLEMENTATION AND EVALUATION INDICATORS

Each affected African country Party shall designate an appropriate national coordinating body to function as a catalyst in the preparation, implementation and evaluation of its national action programme. This coordinating body shall, in the light of article 3 and as appropriate:

(*a*) Undertake an identification and review of actions, beginning with a locally driven consultation process, involving local populations and communities and with the cooperation of local administrative authorities, developed country Parties and intergovernmental and non-governmental organizations, on the basis of initial consultations of those concerned at the national level;

(*b*) Identify and analyze the constraints, needs and gaps affecting development and sustainable land use and recommend practical measures to avoid duplication by making full use of relevant ongoing efforts and promote implementation of results;

(*c*) Facilitate, design and formulate project activities based on interactive, flexible approaches in order to ensure active participation of the population in affected areas, to minimize the negative impact of such activities, and to identify and prioritize requirements for financial assistance and technical cooperation;

(*d*) Establish pertinent, quantifiable and readily verifiable indicators to ensure the assessment and evaluation of national action programmes, which encompass actions in the short, medium and long terms, and of the implementation of such programmes; and

(*e*) Prepare progress reports on the implementation of the national action programmes.

Article 10

ORGANIZATIONAL FRAMEWORK OF SUBREGIONAL ACTION PROGRAMMES

1. Pursuant to article 4 of the Convention, African country Parties shall cooperate in the preparation and implementation of subregional action programmes for central, eastern, northern, southern and western Africa and, in that regard, may delegate the following responsibilities to relevant subregional intergovernmental organizations:

(*a*) Acting as focal points for preparatory activities and coordinating the implementation of the subregional action programmes;

(*b*) Assisting in the preparation and implementation of national action programmes;

(*c*) Facilitating the exchange of information, experience and know-how as well as providing advice on the review of national legislation; and

(*d*) Any other responsibilities relating to the implementation of subregional action programmes.

2. Specialized subregional institutions may provide support, upon request, and/or be entrusted with the responsibility to coordinate activities in their respective fields of competence.

Article 11

CONTENT AND PREPARATION OF SUBREGIONAL ACTION PROGRAMMES

Subregional action programmes shall focus on issues that are better addressed at the subregional level. They shall establish, where necessary, mechanisms for the management of shared natural resources. Such mechanisms shall effectively handle transboundary problems associated with desertification and/or drought and shall provide support for the harmonious

implementation of national action programmes. Priority areas for subregional action programmes shall, as appropriate, focus on:

(*a*) Joint programmes for the sustainable management of transboundary natural resources through bilateral and multilateral mechanisms, as appropriate;

(*b*) Coordination of programmes to develop alternative energy sources;

(*c*) Cooperation in the management and control of pests as well as of plant and animal diseases;

(*d*) Capacity-building, education and public awareness activities that are better carried out or supported at the subregional level;

(*e*) Scientific and technical cooperation, particularly in the climatological, meteorological and hydrological fields, including networking for data collection and assessment, information-sharing and project monitoring, and coordination and prioritization of research and development activities;

(*f*) Early warning systems and joint planning for mitigating the effects of drought, including measures to address the problems resulting from environmentally induced migrations;

(*g*) Exploration of ways of sharing experiences, particularly regarding participation of local populations and communities, and creation of an enabling environment for improved land use management and for use of appropriate technologies;

(*h*) Strengthening of the capacity of subregional organizations to coordinate and provide technical services, as well as establishment, reorientation and strengthening of subregional centres and institutions; and

(*i*) Development of policies in fields, such as trade, which have impact upon affected areas and populations, including policies for the coordination of regional marketing regimes and for common infrastructure.

Article 12

ORGANIZATIONAL FRAMEWORK OF THE REGIONAL ACTION PROGRAMME

1. Pursuant to article 11 of the Convention, African country Parties shall jointly determine the procedures for preparing and implementing the regional action programme.

2. The Parties may provide appropriate support to relevant African regional institutions and organizations to enable them to assist African country Parties to fulfil their responsibilities under the Convention.

Article 13

CONTENT OF THE REGIONAL ACTION PROGRAMME

The regional action programme include measures relating to combating desertification and/or mitigating the effects of drought in the following priority areas, as appropriate:

(*a*) Development of regional cooperation and coordination of subregional action programmes for building regional consensus on key policy areas, including through regular consultations of subregional organizations;

(*b*) Promotion of capacity-building in activities which are better implemented at the regional level;

(*c*) The seeking of solutions with the international community to global economic and social issues that have an impact on affected areas taking account article 4, paragraph 2(b) of the Convention.

(*d*) Promotion among the affected country Parties of Africa and its subregions, as well as with other affected regions, of exchange of information and appropriate techniques, technical know-how and relevant experience;

(*e*) Promotion of scientific and technological cooperation particularly in the fields of climatology, meteorology, hydrology, water resource development and alternative energy sources;

(*f*) Coordination of subregional and regional research activities and identification of regional priorities for research and development;

(*g*) Coordination of networks for systematic observation and assessment and information exchange, as well as their integration into worldwide networks; and

(*h*) Coordination of and reinforcement of subregional and regional early warning systems and drought contingency plans.

Article 14

Financial resources

1. Pursuant to article 20 of the Convention and article 4, paragraph 2, affected African country Parties shall endeavour to provide a macroeconomic framework conducive to the mobilization of financial resources and shall develop policies and establish procedures to channel resources more effectively to local development programmes, including through non-governmental organizations, as appropriate.

2. Pursuant to article 21, paragraphs 4 and 5 of the Convention, the Parties agree to establish an inventory of sources of funding at the national, subregional, regional and international levels to ensure the rational use of existing resources and to identify gaps in resource allocation, to facilitate implementation of the action programmes. The inventory shall be regularly reviewed and updated.

3. Consistent with article 7 of the Convention, the developed country Parties shall continue to allocate significant resources and/or increased resources and other forms of assistance to affected African country Parties on the basis of partnership agreements and arrangements referred to in article 18, giving, *inter alia*, due attention to matters related to debt, international trade and marketing arrangements in accordance with article 4, paragraph 2(b) of the Convention.

Article 15

Financial mechanisms

1. Consistent with article 7 of the Convention and considering the particular situation prevailing in this region, the Parties shall pay special attention to the implementation in Africa of the provisions of article 21, paragraph 1(d) and (e), of the Convention, notably by:

(*a*) Facilitating the establishment of mechanisms, such as national desertification funds, to channel financial resources to the local level; and

(*b*) Strengthening existing funds and financial mechanisms at the subregional regional levels.

2. Consistent with articles 20 and 21 of the Convention, the Parties which are also members of the governing bodies of relevant regional and subregional financial institutions, including the African Development Bank and the African Development Fund, shall promote efforts to give due priority and attention to the activities of those institutions that advance the implementation of this Annex.

3. The Parties shall streamline, to the extent possible, procedures for channeling funds to affected African country Parties.

Article 16

TECHNICAL ASSISTANCE AND COOPERATION

The Parties undertake, in accordance with their respective capabilities, to rationalize technical assistance to, and cooperation with, African country Parties with a view to increasing project and programme effectiveness by, *inter alia*:

(*a*) Limiting the costs of support measures and backstopping, especially overhead costs, so that, in any case, such costs shall only represent an appropriately low percentage of the total cost of the project so as to maximize project efficiency;

(*b*) Giving preference to the utilization of competent national experts or, where necessary, competent experts from within the subregion and/or region, in project design, preparation and implementation, and to the building of local expertise where it does not exist; and

(*c*) Effectively managing and coordinating, as well as efficiently utilizing, technical assistance to be provided.

Article 17

TRANSFER, ACQUISITION, ADAPTATION AND ACCESS TO ENVIRONMENTALLY SOUND TECHNOLOGY

In implementing article 18 of the Convention relating to transfer, acquisition, adaptation and development of technology, the Parties undertake to give priority to African country Parties and, as necessary, to develop with them new models of partnership and cooperation with a view to strengthening capacity building in the fields of scientific research and development and information collection and dissemination to enable them to implement their strategies to combat desertification and mitigate the effects of drought.

Article 18

COORDINATION AND PARTNERSHIP AGREEMENTS

1. African country Parties shall coordinate the preparation, negotiation and implementation of national, subregional and regional action programmes. They may involve, as appropriate, other Parties and relevant intergovernmental and non-governmental organizations in this process.

2. The objectives of such coordination shall be to ensure that financial and technical cooperation is consistent with the Convention and to provide the necessary continuity in the use and administration of resources.

3. African country Parties shall organize consultative processes at the national, subregional and regional levels. These consultative processes may:

(*a*) Serve as a forum to negotiate and conlcude partnership agreements based on national, subregional and regional action programmes; and

(*b*) Specify the contribution of African country Parties and other members of the consultative groups to the programmes and identify priorities and agreements on implementation and evaluation indicators, as well as funding arrangements for implementation.

4. The Permanent Secretariat may, at the request of African country Parties, pursuant to article 23 of the Convention, facilitate the convocation of such consultative processes by:

(*a*) Providing advice on the organization of effective consultative arrangements, drawing on experiences from other such arrangements;

(*b*) Providing information to relevant bilateral and multilateral agencies concerning consultative meetings or processes, and encouraging their active involvement; and

(*c*) Providing other information that may be relevant in establishing or improving consultative arrangements.

5. The subregional and regional coordinating bodies shall, inter alia:

(*a*) Recommend appropriate adjustments to partnership agreements;

(*b*) Monitor, assess and report on the implementation of the agreed subregional and regional programmes; and

(*c*) Aim to ensure efficient communication and cooperation among African country Parties.

6. Participation in the consultative groups shall, as appropriate, be open to Governments, interested groups and donors, relevant organs, funds and programmes of the United Nations system, relevant subregional and regional organizations, and representatives of relevant non-governmental organizations. Participants of each consultative group shall determine the modalities of its management and operation.

7. Pursuant to article 14 of the Convention, developed country Parties are encouraged to develop, on their own initiative, an informal process of consultation and coordination among themselves, at the country, subregional and regional levels, and, at the request of an affected African country Party or of an appropriate subregional or regional organization, to participate in a national, subregional or regional consultative process that would evaluate and respond to assistance needs in order to facilitate implementation.

Article 19

FOLLOW-UP ARRANGEMENTS

Follow-up of this Annex shall be carried out by African country Parties in accordance with the Convention as follows:

(*a*) At the national level, by a mechanism the composition of which should be determined by each affected African country Party and which shall include representatives of local communities and shall function under the supervision of the national coordinating body referred to in article 9;

(*b*) At the subregional level, by a multidisciplinary scientific and technical consultative committee, the composition and modalities of operation of which shall be determined by the African country Parties of the subregion concerned; and

(*c*) At the regional level, by mechanisms defined in accordance with the relevant provisions of the Treaty establishing the African Economic Community, and by an African Scientific and Technical Advisory Committee.

ANNEX II

Regional Implementation Annex for Asia

Article 1

PURPOSE

The purpose of this annex is to provide guidelines and arrangements for the effective implementation of the Convention in the affected country Parties of the Asian region in the light of its particular conditions.

Article 2

PARTICULAR CONDITIONS OF THE ASIAN REGION

In carrying out their obligations under the Convention, the Parties shall, as appropriate, take into consideration the following particular conditions which apply in varying degrees to the affected country Parties of the region:

(*a*) The high proportion of areas in their territories affected by, or vulnerable to, desertification and drought and the broad diversity of these areas with regard to climate, topography, land use and socio-economic systems;

(*b*) The heavy pressure on natural resources for livelihoods;

(*c*) The existence of production systems, directly related to widespread poverty, leading to land degradation and to pressure on scarce water resources;

(*d*) The significant impact of conditions in the world economy and social problems such as poverty, poor health and nutrition, lack of food security, migration, displaced persons and demographic dynamics;

(*e*) Their expanding, but still insufficient, capacity and institutional frameworks to deal with national desertification and drought problems; and

(*f*) Their need for international cooperation to pursue sustainable development objectives relating to combating desertification and mitigating the effects of drought.

Article 3

FRAMEWORK FOR NATIONAL ACTION PROGRAMMES

1. National action programmes shall be an integral part of broader national policies for sustainable development of the affected country Parties of the region.

2. The affected country Parties shall, as appropriate, develop national action programmes pursuant to articles 9 to 11 of the Convention, paying special attention to article 10, paragraph 2(f). As appropriate, bilateral and multilateral cooperation agencies may be involved in this process at the request of the affected country Party concerned.

Article 4

NATIONAL ACTION PROGRAMMES

1. In preparing and implementing national action programmes, the affected country Parties of the region, consistent with their respective circumstances and policies, may, *inter alia*, as appropriate:

(*a*) Designate appropriate bodies responsible for the preparation, coordination and implementation of their action programmes;

(*b*) Involve affected populations, including local communities, in the elaboration, coordination and implementation of their action programmes through a locally driven consultative process, with the cooperation of local authorities and relevant national non-governmental organizations;

(*c*) Survey the state of the environment in affected areas to assess the causes and consequences of desertification and to determine priority areas for action;

(*d*) Evaluate, with the participation of affected populations, past and current programmes for combating desertification and mitigating the effects of drought, in order to design a strategy and elaborate activities in their action programmes;

(*e*) Prepare technical and financial programmes based on the information derived from the activities in subparagraphs (a) to (d);

(*f*) Develop and utilize procedures and benchmarks for evaluating implementation of their action programmes;

(*g*) Promote the integrated management of drainage basins, the conservation of soil resources, and the enhancement and efficient use of water resources;

(*h*) Strengthen and/or establish information, evaluation and follow-up and early warning systems in regions prone to desertification and drought, taking account of climatological, meteorological, hydrological, biological and other relevant factors; and

(*i*) Formulate in a spirit of partnership, where international cooperation, including financial and technical resources, is involved, appropriate arrangements supporting their action programmes.

2. Consistent with article 10 of the Convention, the overall strategy of national action programmes shall emphasize integrated local development programmes for affected areas, based on participatory mechanisms and on the integration of strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought. Sectoral measures in the action programmes shall be grouped in priority fields which take account of the broad diversity of affected areas in the region referred to in article 2(a).

Article 5

Subregional and joint action programmes

1. Pursuant to article 11 of the Convention, affected country Parties in Asia may mutually agree to consult and cooperate with other Parties, as appropriate, to prepare and implement subregional or joint action programmes, as appropriate, in order to complement, and increase effectiveness in the implementation of, national action programmes. In either case, the relevant Parties may jointly agree to entrust subregional, including bilateral or national organizations, or specialized institutions, with responsibilities relating to the preparation, coordination and implementation of programmes. Such organizations or institutions may also act as focal points for the promotion and coordination of actions pursuant to articles 16 to 18 of the Convention.

2. In preparing and implementing subregional or joint action programmes, the affected country Parties of the region shall, *inter alia*, as appropriate:

(*a*) Identify, in cooperation with national institutions, priorities relating to combating desertification and mitigating the effects of drought which can better be met by such programmes, as well as relevant activities which could be effectively carried out through them;

(*b*) Evaluate the operational capacities and activities of relevant regional, subregional and national institutions;

(*c*) Assess existing programmes relating to desertification and drought among all or some parties of the region or subregion and their relationship with national action programmes; and

(*d*) Formulate in a spirit of partnership, where international cooperation, including financial and technical resources, is involved, appropriate bilateral and/or multilateral arrangements supporting the programmes.

3. Subregional or joint action programmes may include agreed joint programmes for the sustainable management of transboundary natural resources relating to desertification, priorities for coordination and other activities in the fields of capacity building, scientific and technical cooperation, particularly drought early warning systems and information sharing, and means of strengthening the relevant subregional and other organizations or institutions.

Article 6

REGIONAL ACTIVITIES

Regional activities for the enhancement of subregional or joint action programmes may include, *inter alia*, measures to strengthen institutions and mechanisms for coordination and cooperation at the national, subregional and regional levels, and to promote the implementation of articles 16 to 19 of the Convention. These activities may also include:

(*a*) Promoting and strengthening technical cooperation networks;

(*b*) Preparing inventories of technologies, knowledge, know-how and practices, as well as traditional and local technologies and know-how, and promoting their dissemination and use;

(*c*) Evaluating the requirements for technology transfer and promoting the adaptation and use of such technologies; and

(*d*) Encouraging public awareness programmes and promoting capacity building at all levels, strengthening training, research and development and building systems for human resource development.

Article 7

FINANCIAL RESOURCES AND MECHANISMS

1. The Parties shall, in view of the importance of combating desertification and mitigating the effects of drought in the Asian region, promote the mobilization of substantial financial resources and the availability of financial mechanisms, pursuant to articles 20 and 21 of the Convention.

2. In conformity with the Convention and on the basis of the coordinating mechanism provided for in article 8 and in accordance with their national development policies, affected country Parties of the region shall, individually or jointly:

(*a*) Adopt measures to rationalize and strengthen mechanisms to supply funds through public and private investment with a view to achieving specific results in action to combat desertification and mitigate the effects of drought;

(*b*) Identify international cooperation requirements in support of national efforts, particularly financial, technical and technological; and

(*c*) Promote the participation of bilateral and/or multilateral financial cooperation institutions with a view to ensuring implementation of the Convention.

3. The Parties shall streamline, to the extent possible, procedures for channeling funds to affected country Parties in the region.

Article 8

COOPERATION AND COORDINATION MECHANISMS

1. Affected country Parties, through the appropriate bodies designated pursuant to article 4, paragraph 1(a), and other Parties in the region, may, as appropriate, set up a mechanism for, *inter alia*, the following purposes:

(*a*) Exchange of information, experience, knowledge and know-how;

(*b*) Cooperation and coordination of actions, including bilateral and multilateral arrangements, at the subregional and regional levels;

(*c*) Promotion of scientific, technical, technological and financial cooperation pursuant to articles 5 to 7;

(*d*) Identification of external cooperation requirements; and

(*e*) Follow-up and evaluation of the implementation of action programmes.

2. Affected country Parties, through the appropriate bodies designated pursuant to article 4, paragraph 1(a), and other Parties in the region, may also, as appropriate, consult and coordinate as regards the national, subregional and joint action programmes. They may involve, as appropriate, other Parties and relevant intergovernmental and non-governmental organizations in this process. Such coordination shall, *inter alia*, seek to secure agreement on opportunities for international cooperation in accordance with articles 20 and 21 of the Convention, enhance technical cooperation and channel resources so that they are used effectively.

3. Affected country Parties of the region shall hold periodic coordination meetings, and the Permanent Secretariat may, at their request, pursuant to article 23 of the Convention, facilitate the convocation of such coordination meetings by:

(*a*) Providing advice on the organization of effective coordination arrangements, drawing on experience form other such arrangements;

(*b*) Providing information to relevant bilateral and multilateral agencies concerning coordination meetings, and encouraging their active involvement; and

(*c*) Providing other information that may be relevant in establishing or improving coordination processes.

ANNEX III

Regional Implementation Annex for Latin America and the Caribbean

Article 1

Purpose

The purpose of this annex is to provide general guidelines for the implementation of the Convention in the Latin American and Caribbean region, in light of its particular conditions.

Article 2

Particular conditions of the Latin American and Caribbean region

The Parties shall, in accordance with the provisions of the Convention take into consideration the following particular conditions of the region:

(*a*) The existence of broad expanses which are vulnerable and have been severely affected by desertification and/or drought and in which diverse characteristics may be observed, depending on the area in which they occur; this cumulative and intensifying process has negative social, cultural, economic and environmental effects which are all the more serious in that the region contains one of the largest resources of biological diversity in the world;

(*b*) The frequent use of unsustainable development practices in affected areas a result of complex interactions among physical, biological, political, social, cultural and economic factors, including international economic factors such as external indebtedness, deteriorating terms of trade and trade practices which affect markets for agricultural, fishery and forestry products; and

(*c*) A sharp drop in the productivity of ecosystems being the main consequence of desertification and drought, taking the form of a decline in agricultural, livestock and forestry yields and a loss of biological diversity; from the social point of view, the results are impoverishment, migration, internal population movements, and the deterioration of the quality of

life; the region will therefore have to adopt an integrated approach to problems of desertification and drought by promoting sustainable development models that are in keeping with the environmental, economic and social situation in each country.

Article 3

ACTION PROGRAMMES

1. In conformity with the Convention, in particular its articles 9 to 11, and in accordance with their national development policies, affected country Parties of the region shall, as appropriate, prepare and implement national action programmes to combat desertification and mitigate the effects of drought as an integral part of their national policies for sustainable development. Subregional and regional programmes may be prepared and implemented in accordance with the requirements of the region.

2. In the preparation of their national action programmes, affected country Parties of the region shall pay particular attention to article 10, paragraph 2(f) of the Convention.

Article 4

CONTENT OF NATIONAL ACTION PROGRAMMES

In the light of their respective situations, the affected country Parties of the region may take account, *inter alia*, of the following thematic issues in developing their national strategies for action to combat desertification and/or mitigate the effects of drought, pursuant to article 5 of the Convention:

(*a*) Increasing capacities, education and public awareness, technical, scientific and technological cooperation and financial resources and mechanisms:

(*b*) Eradicating poverty and improving the quality of human life;

(*c*) Achieving food security and sustainable development and management of agricultural, livestock-rearing, forestry and multi-purpose activities;

(*d*) Sustainable management of natural resources, especially the rational management of drainage basins;

(*e*) Sustainable management of natural resources in high-altitude areas;

(*f*) Rational management and conservation of soil resources and exploitation and efficient use of water resources;

(*g*) Formulation and application of emergency plans to mitigate the effects of drought;

(*h*) Strengthening and/or establishing information, evaluation and follow-up and early warning systems in areas prone to desertification and drought, taking account of climatological, meteorological, hydrological, biological, soil, economic and social factors;

(*i*) Developing, managing and efficiently using diverse sources of energy, including the promotion of alternative sources;

(*j*) Conservation and sustainable use of biodiversity in accordance with the provisions of the Convention on Biological Diversity;

(*k*) Consideration of demographic aspects related to desertification and drought; and

(*l*) Establishing or strengthening institutional and legal frameworks permitting application of the Convention and aimed, *inter alia*, at decentralizing administrative structures and functions relating to desertification and drought, with the participation of affected communities and society in general.

Article 5

TECHNICAL, SCIENTIFIC AND TECHNOLOGICAL COOPERATION

In conformity with the Convention, in particular its articles 16 to 18, and on the basis of the coordinating mechanism provided for in article 7, affected country Parties of the region shall, individually or jointly:

(*a*) Promote the strengthening of technical cooperation networks and national, subregional and regional information systems, as well as their integration, as appropriate, in world-wide sources of information;

(*b*) Prepare an inventory of available technologies and know-how and promote their dissemination and use;

(*c*) Promote the use of traditional technology, knowledge, know-how and practices pursuant to article 18, paragraph 2(b), of the Convention;

(*d*) Identify transfer of technology requirements; and

(*e*) Promote the development, adaptation, adoption and transfer of relevant existing and new environmentally sound technologies.

Article 6

FINANCIAL RESOURCES AND MECHANISMS

In conformity with the Convention, in particular its articles 20 and 21, on the basis of the coordinating mechanism provided for in article 7 and in accordance with their national development policies, affected country Parties of the region shall, individually or jointly:

(*a*) Adopt measures to rationalize and strengthen mechanisms to supply funds through public and private investment with a view to achieving specific results in action to combat desertification and mitigate the effects of drought;

(*b*) Identify international cooperation requirements in support of national efforts; and

(*c*) Promote the participation of bilateral and/or multilateral financial cooperation institutions with a view to ensuring implementation of the Convention.

Article 7

INSTITUTIONAL FRAMEWORK

1. In order to give effect to this Annex, affected country Parties of the region shall:

(*a*) Establish and/or strengthen national focal points to coordinate action to combat desertification and/or mitigate the effects of drought; and

(*b*) Set up a mechanism to coordinate the national focal points for the following purposes:

(i) Exchanges of information and experience;

(ii) Coordination of activities at the subregional and regional levels;

(iii) Promotion of technical, scientific, technological and financial cooperation;

(iv) Identification of external cooperation requirements; and

(v) Follow-up and evaluation of the implementation of action programmes.

2. Affected country Parties of the region shall hold periodic coordination meetings and the Permanent Secretariat may, at their request, pursuant to article 23 of the Convention, facilitate the convocation of such coordination meetings, by:

(*a*) Providing advice on the organization of effective coordination arrangements, drawing on experience from other such arrangements;

(*b*) Providing information to relevant bilateral and multilateral agencies concerning coordination meetings, and encouraging their active involvement; and

(*c*) Providing other information that may be relevant in establishing or improving coordination processes.

ANNEX IV

Regional Implementation Annex for the Northern Mediterranean

Article I

Purpose

The purpose of this annex is to provide guidelines and arrangements necessary for the effective implementation of the Convention in affected country Parties of the northern Mediterranean region in the light of its particular conditions.

Article 2

Particular conditions of the northern Mediterranean region

The particular conditions of the northern Mediterranean region referred to in article 1 include:

(*a*) Semi-arid climatic conditions affecting large areas, seasonal droughts, very high rainfall variability and sudden and high-intensity rainfall;

(*b*) Poor and highly erodible soils, prone to develop surface crusts;

(*c*) Uneven relief with steep slopes and very diversified landscapes;

(*d*) Extensive forest coverage losses due to frequent wildfires;

(*e*) Crisis conditions in traditional agriculture with associated land abandonment and deterioration of soil and water conservation structures;

(*f*) Unsustainable exploitation of water resources leading to serious environmental damage, including chemical pollution, salinization and exhaustion of aquifers; and

(*g*) Concentration of economic activity in coastal areas as a result of urban growth, industrial activities, tourism and irrigated agriculture.

Article 3

Strategic planning framework for sustainable development

1. National action programmes shall be a central and integral part of the strategic planning framework for sustainable development of the affected country Parties of the northern Mediterranean.

2. A consultative and participatory process, involving appropriate levels of government, local communities and non-governmental organizations, shall be undertaken to provide guidance on a strategy with flexible planning allow maximum local participation, pursuant to article 10, paragraph 2(f) of the Convention.

Article 4

OBLIGATION TO PREPARE NATIONAL ACTION PROGRAMMES AND TIMETABLE

Affected country Parties of the northern Mediterranean region shall prepare national action programmes and, as appropriate, subregional, regional or joint action programmes. The preparation of such programmes shall be finalized as soon as practicable.

Article 5

PREPARATION AND IMPLEMENTATION OF NATIONAL ACTION PROGRAMMES

In preparing and implementing national action programmes pursuant to articles 9 and 10 of the Convention, each affected country Party of the region shall, as appropriate:

(*a*) Designate appropriate bodies responsible for the preparation, coordination and implementation of its programme;

(*b*) Involve affected populations, including local communities, in the elaboration, coordination and implementation of the programme through a locally driven consultative process, with the cooperation of local authorities and relevant non-governmental organizations;

(*c*) Survey the state of the environment in affected areas to assess the causes and consequences of desertification and to determine priority areas for action;

(*d*) Evaluate, with the participation of affected populations, past and current programmes in order to design a strategy and elaborate activities in the action programme;

(*e*) Prepare technical and financial programmes based on the information gained through the activities in subparagraphs (a) to (d); and

(*f*) Develop and utilize procedures and benchmarks for monitoring and evaluating the implementation of the programme.

Article 6

CONTENT OF NATIONAL ACTION PROGRAMMES

Affected country Parties of the region may include, in their national action programmes, measures relating to:

(*a*) Legislative, institutional and administrative areas;

(*b*) Land-use patterns, management of water resources, soil conservation, forestry, agricultural activities and pasture and range management;

(*c*) Management and conservation of wildlife and other forms of biological diversity;

(*d*) Protection against forest fires;

(*e*) Promotion of alternative livelihoods; and

(*f*) Research, training and public awareness.

Article 7

SUBREGIONAL, REGIONAL AND JOINT ACTION PROGRAMMES

1. Affected country Parties of the region may, in accordance with article 11 of the Convention, prepare and implement subregional and/or regional action programmes in order to complement and increase the efficiency of national action programmes. Two or more affected country Parties of the region, may similarly agree to prepare a joint action programme between or among them.

2. The provisions of articles 5 and 6 shall apply *mutatis mutandis* to the preparation and implementation of subregional, regional and joint action programmes. In addition, such programmes may include the conduct of research and development activities concerning selected ecosystems in affected areas.

3. In preparing and implementing subregional, regional or joint action programmes, affected country Parties of the region shall, as appropriate:

(*a*) Identify, in cooperation with national institutions, national objectives relating to desertification which can better be met by such programmes and relevant activities which could be effectively carried out through them;

(*b*) Evaluate the operational capacities and activities of relevant regional, subregional and national institutions; and

(*c*) Assess existing programmes relating to desertification among Parties of the region and their relationship with national action programmes.

Article 8

COORDINATION OF SUBREGIONAL, REGIONAL AND JOINT ACTION PROGRAMMES

Affected country Parties preparing a subregional, regional or joint action programme may establish a coordination committee composed of representatives of each affected country Party concerned to review progress in combating desertification, harmonize national action programmes, make recommendations at the various stages of preparation and implementation of the subregional, regional or joint action programme, and act as a focal point for the promotion and coordination of technical cooperation pursuant to articles 16 to 19 of the Convention.

Article 9

NON-ELIGIBILITY FOR FINANCIAL ASSISTANCE

In implementing national, subregional, regional and joint action programmes, affected developed country Parties of the region are not eligible to receive financial assistance under this Convention.

Article 10

COORDINATION WITH OTHER SUBREGIONS AND REGIONS

Subregional, regional and joint action programmes in the northern Mediterranean region may be prepared and implemented in collaboration with those of other subregions or regions, particularly with those of the subregion of northern Africa.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. INTERNATIONAL LABOUR ORGANIZATION*

Convention and Recommendation concerning Part-time Work.[13] Done at Geneva on 24 June 1994[14]

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 81st Session on 7 June 1994, and

Noting the relevance, for part-time workers, of the provisions of the Equal Remunerative Convention, 1951, the Discrimination (Employment and Occupation) Convention, 1958, and the Workers with Family Responsibilities Convention and Recommendation, 1981, and

Noting the relevance for these workers of the Employment Promotion and Protection against Unemployment Convention, 1988, and the Employment Policy (Supplementary Provisions) Recommendation, 1984, and

Recognizing the importance of productive and freely chosen employment for all workers, the economic importance of part-time work, the need for employment policies to take into account the role of part-time work in facilitating additional employment opportunities, and the need to ensure protection for part-time workers in the areas of access to employment, working conditions and social security, and

Having decided upon the adoption of certain proposals with regard to part-time work, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention

adopts this twenty-fourth day of June of the year one thousand nine hundred and ninety-four the following Convention, which may be cited as the Part-Time Work Convention, 1994:

Article 1

For the purposes of this Convention:

(*a*) The term "part-time worker" means an employed person whose normal hours of work are less than those of comparable full-time workers;

(*b*) The normal hours of work referred to in subparagraph (a) may be calculated weekly or on average over a given period of employment;

(*c*) The term "comparable full-time worker" refers to a full-time worker who:

(i) Has the same type of employment relationship;

(ii) Is engaged in the same or a similar type of work or occupation; and

(iii) Is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity,

as the part-time worker concerned;

(*d*) Full-time workers affected by partial unemployment, that is by a collective and temporary reduction in their normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers.

Article 2

This Convention does not affect more favorable provisions applicable to part-time workers under other international labour Conventions.

Article 3

1. This Convention applies to all part-time workers, it being understood that a Member may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from its scope particular categories of workers or of establishments when its application to them would raise particular problems of a substantial nature.

2. Each Member having ratified this Convention which avails itself of the possibility afforded in the preceding paragraph shall, in its reports on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicate any particular category of workers or of establishments thus excluded and the reasons why this exclusion was or is still judged necessary.

Article 4

Measures shall be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of:

(*a*) The right to organize, the right to bargain collectively and the right to act as workers' representatives;

(*b*) Occupational safety and health;

(*c*) Discrimination in employment and occupation.

Article 5

Measures appropriate to national law and practice shall be taken to ensure that part-time workers do not, solely because they work part time, receive a basic wage which, calculated proportionately on an hourly, performance-related, or piece-rate basis, is lower than the basic wage of comparable full-time workers, calculated according to the same method.

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* The order of the organizations reflects the chronological order, from earlier to most recent, of the effective date the United Nations entered into a relationship with the organization. All the organizations listed here are United Nations specialized agencies, except the IAEA, which is an autonomous intergovernmental organization under the aegis of the United Nations and is listed last.

Article 6

Statutory social security schemes which are based on occupational activity shall be adapted so that part-time workers enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to hours of work, contributions or earnings, or though other methods consistent with national law and practice.

Article 7

Measures shall be taken to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of:

(*a*) Maternity protection;

(*b*) Termination of employment;

(*c*) Paid annual leave and paid public holidays; and

(*d*) Sick leave.

it being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings.

Article 8

1. Part-time workers whose hours of work or earnings are below specified thresholds may be excluded by a member:

(*a*) From the scope of any of the statutory social security schemes referred to in article 6, except in regard to employment injury benefits;

(*b*) From the scope of any of the measures taken in the fields covered by article 7, except in regard to maternity protection measures other than those provided under statutory social security schemes.

2. The thresholds referred to in paragraph 1 shall be sufficiently low as not to exclude an unduly large percentage of part-time workers.

3. A member which avails itself of the possibility provided for in paragraph 1 above shall:

(*a*) Periodically review the thresholds in force;

(*b*) In its reports on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicate the thresholds in force, the reasons therefor and whether consideration is being given to the progressive extension of protection to the workers excluded.

4. The most representative organization of employers and workers shall be consulted on the establishment, review and revision of the thresholds referred to in this article.

Article 9

1. Measures shall be taken to facilitate access to productive and freely chosen part-time work which meets the needs of both employers and workers, provided that the protection referred to in articles 4 to 7 is ensured.

2. These measures shall include:

(*a*) The review of laws and regulations that may prevent or discourage recourse to or acceptance of part-time work;

(*b*) The use of employment services, where they exist, to identify and publicize possibilities for part-time work in their information and placement activities;

(*c*) Special attention, in employment policies, to the needs and preferences of specific groups such as the unemployed, workers with family responsibilities, older workers, workers with disabilities and workers undergoing education or training.

3. These measures may also include research and dissemination of information on the degree to which part-time work responds to the economic and social aims of employers and workers.

Article 10

Where appropriate, measures shall be taken to ensure that transfer from full-time to part-time work or vice versa is voluntary, in accordance with national law and practice.

Article 11

The provisions of this Convention shall be implemented by laws or regulations, except in so far as effect is given to them by means of collective agreements or in any other manner consistent with national practice. The most representative organizations or employers and workers shall be consulted before any such laws or regulations are adopted.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General.

2. It shall come into force 12 months after the date on which the ratifications of two members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any member 12 months after the date on which its ratification has been registered.

Article 14

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this article.

Article 15

1. The Director-General of the International Labour Office shall notify all members of the International Labour Organization of the registration of all ratifications and denunciations communicated to him by the members of the Organization.

2. When notifying the members of the Organization of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the members of the Organization to the date upon which the Convention will come into force.

Article 16

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciations registered by him in accordance with the provisions of the preceding Articles.

Article 17

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 18

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(*a*) The ratification by a member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of article 14 above, if and when the new revising Convention shall have come into force;

(*b*) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the members.

2. This Convention shall in any case remain in force in its actual form and content for those members which have ratified it but have not ratified the revising Convention.

Article 19

The English and French versions of the text of this Convention are equally authoritative.

Recommendation 182

RECOMMENDATIONS CONCERNING PART-TIME WORK

The General Conference of the International Labour Organizations,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 81st Session on 7 June 1994, and

Having decided upon the adoption of certain proposals with regard to part-time work, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Part-time Work Convention, 1994;

adopts this twenty-fourth day of June of the year one thousand nine hundred and ninety-four the following Recommendation, which may be cited as the Part-time Work Recommendation, 1994:

1. The provisions of this Recommendation should be considered in conjunction with those of the Part-time Work Convention, 1994 (hereafter referred to as "the Convention").

2. For the purposes of this Recommendation:

(*a*) The term "part-time worker" means an employed person whose normal hours of work are less than those of comparable full-time workers;

(*b*) The normal hours of work referred to in clause (a) may be calculated weekly or on average over a given period of employment;

(*c*) The term "comparable full-time worker" refers to a full-time worker who:

(i) Has the same type of employment relationship;

(ii) Is engaged in the same or a similar type of work or occupation; and

(iii) Is employed in the same establishment or, when there is no comparable full-time worker in that establishment, in the same enterprise or, when there is no comparable full-time worker in that enterprise, in the same branch of activity,

as the part-time worker concerned;

(*d*) Full-time workers affected by partial unemployment, that is by a collective and temporary reduction in their normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers.

3. This Recommendation applies to all part-time workers.

4. In accordance with national law and practice, employers should consult the representatives of the workers concerned on the introduction or extension of part-time work on a broad scale, on the rules and procedures applying to such work and on the protective and promotional measures that may be appropriate.

5. Part-time workers should be informed of their specific conditions of employment in writing or by any other means consistent with national law and practice.

6. The adaptations to be made in accordance with Article 6 of the Convention to statutory social security schemes which are based on occupational activity should aim at:

(*a*) If appropriate, progressively reducing threshold requirements based on earnings or hours of work as a condition for coverage by these schemes;

(*b*) As appropriate, granting to part-time workers minimum or flat-rate benefits, in particular old-age, sickness, invalidity and maternity benefits, as well as family allowance;

(*c*) Accepting in principle that part-time workers whose employment has come to an end or been suspended and who are seeking only part-time employment meet the condition of availability for work required for the payment of unemployment benefits;

(*d*) Reducing the risk that part-time workers may be penalized by schemes which:

(i) Subject the right to benefits to a qualifying period, expressed in terms of periods of contribution, of insurance or of employment during a given reference period; or

(ii) Fix the amount of benefits by reference both to the average of former earnings and to the length of the periods of contribution, of insurance or of employment.

7. (1) Where appropriate, threshold requirements for access to coverage under private occupational schemes which supplement or replace statutory social security schemes should be progressively reduced to allow part-time workers to be covered as widely as possible.

(2) Part-time workers should be protected by such schemes under conditions equivalent to those of comparable full-time workers. Where appropriate, these conditions may be determined in proportion to hours of work, contributions or earning.

8. (1) As appropriate, threshold requirements based on hours of work or earnings as specified under article 8 of the Convention in the fields referred to in its article 7 should be progressively reduced.

(2) The periods of service required as a condition for protection in the fields referred to in article 7 of the Convention should not be longer for part-time workers than for comparable full-time workers.

9. Where part-time workers have more than one job, their total hours of work, contributions or earnings should be taken into account in determining whether they meet threshold requirements in statutory social security schemes which are based on occupation activity.

10. Part-time workers should benefit on an equitable basis from financial compensation, additional to basic wages, which is received by comparable full-time workers.

11. All appropriate measures should be taken to ensure that as far as practicable part-time workers have access on an equitable basis to the welfare facilities and social services of the establishment concerned; these facilities and services should, to the extent possible, be adapted to take into account the needs of part-time workers.

12. (1) The number and scheduling of hours of work of part-time workers should be established taking into account the interests of the worker as well as the needs of the establishment.

(2) As far as possible, changes in the agreed work schedule and work beyond scheduled hours should be subject to restrictions and to prior notice.

(3) The system of compensation for work beyond the agreed work schedule should be subject to negotiations in accordance with national law and practice.

13. In accordance with national law and practice, part-time workers should have access on an equitable basis, and as far as possible under equivalent conditions, to all forms of leave available to comparable full-time workers, in particular paid educational leave, parental leave and leave in cases of illness of a child or another member of a worker's immediate family.

14. Where appropriate, the same rules should apply to part-time workers as to comparable full-time workers with respect to scheduling of annual leave and work on customary rest days and public holidays.

15. Where appropriate, measures should be taken to overcome specific constraints on the access of part-time workers to training, career opportunities and occupational mobility.

16. Provisions of statutory social security schemes based on occupational activity that may discourage recourse to or acceptance of part-time work should be adapted, in particular those which:

(*a*) Result in proportionately higher contributions for part-time workers unless these are justified by corresponding proportionately higher benefits;

(*b*) Without reasonable grounds, significantly reduce the unemployment benefits of unemployed workers who temporarily accept part-time work;

(*c*) Overemphasize, in the calculation of old-age benefits, the reduced income from part-time work undertaken solely during the period preceding retirement.

17. Measures should be considered by employers to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions where appropriate.

18. (1) Where appropriate, employers should give consideration to:

(*a*) Requests by workers for transfer from full-time to part-time work that becomes available in the enterprise; and

(*b*) Requests by workers for transfer from part-time to full-time work that becomes available in the enterprise.

(2) Employers should provide timely information to the workers on the availability of part-time and full-time positions in the establishment, in order to facilitate transfers from full-time to part-time work or vice versa.

19. A worker's refusal to transfer from full-time to part-time work or vice versa should not in itself constitute a valid reason for termination of employment, without prejudice to termination, in accordance with national law and practice, for other reasons such as may arise from the operational requirements of the establishment concerned.

20. Where national or establishment-level conditions permit, workers should be enabled to transfer to part-time work in justified cases, such as pregnancy or the need to care for a young child or a disabled or sick member of a worker's immediate family, and subsequently to return to full-time work.

21. Where obligations on employers depend on the number of the workers they employ, part-time workers should be counted as full-time workers. Nevertheless, where appropriate, part-time workers may be counted proportionately to their hours of work, it being understood that where such obligations refer to the protection mentioned in article 4 of the Convention, they should be counted as full-time workers.

22. Information should be disseminated on the protective measures that apply to part-time work and on practical arrangements for various part-time work schemes.

2. INTERNATIONAL MONETARY FUND

Agreement for the Establishment of the Joint Vienna Institute to Provide Training Support during the Transition of Central and Eastern European Countries to Market-based Economies.[15] Done on 19 August 1994[16]

The parties signatory hereto,

Recognizing the importance of assisting Central and Eastern European countries and countries formerly republics of the USSR. in their transition to market-based economies;

Noting that the training of officials from these countries is one important component of such assistance;

Having regard to the common interests of the Parties in establishing a training institute in Vienna, Austria, for this purpose; and

Responding to the invitation of the Republic of Austria to locate such an institute in Vienna;

Have agreed as follows:

Article I

Establishment and status

1. There is hereby established the Joint Vienna Institute (the "Institute") as an international organization with full juridical personality.

2. The Institute shall operate in accordance with this Agreement.

Article II

Purpose and activities

1. The purpose of the Institute shall be to provide training to support and supplement the national efforts of the countries of Central and Eastern Europe, the countries formerly republics of the USSR and other countries, in their transition from centrally planned economies to market-based economies.

2. To this end, the Institute shall offer courses of instruction of the highest standard and of direct relevance to the purpose of paragraph 1 above, including courses in the areas of administrative and economic and financial management. The Institute shall provide training primarily to public officials, and to other persons, with due regard to the role of the private sector. The Institute will also assist training institutes by providing training and other support.

Article III

POWERS

The Institute shall have the capacity:

(*a*) To contract;

(*b*) To acquire and dispose of immovable and movable property;

(*c*) To institute and respond to legal proceedings; and

(*d*) To take such other action as may be necessary or useful for its purpose and activities.

Article IV

HEADQUARTERS

1. The headquarters of the Institute shall be located in Vienna, Austria, under such terms and conditions as agreed between the Institute and the Republic of Austria.

2. The Institute may establish facilities in other locations as required to support its activities.

Article V

ORGANIZATION AND MANAGEMENT

1. *Structure of the Institute*

The Institute shall have an Executive Board, an Advisory Committee, a Director, and staff.

2. *Executive Board*

(*a*) The Executive Board (the "Board") shall be responsible for the conduct of the business of the Institute.

(*b*) Each of the Parties shall appoint one member to the Board and one Alternate Member to act for the member when he is unable to serve.

(*c*) The Board shall elect a Chairman and a Vice-Chairman from among its members.

(*d*) The Board shall meet at least once a year. Meetings of the Board shall be called by the Chairman as required or when requested by at least two members of the Board.

(*e*) A majority of members of the Board shall constitute a quorum for any meeting of the Board.

(*f*) Decisions of the Board shall be taken by a majority of votes cast, provided that:

(i) The following decisions shall be subject to the approval of all Members voting: decisions under article V, paragraph 2(g)(i), article V, paragraph 2(g)(iii), article V, paragraph 2(g)(vi), and article XVI; and

(ii) The following decisions shall be subject to the approval of four fifths of all Members voting: decisions approving the work program under article V, paragraph 2(g)(ii), and decisions approving the annual budget under article V, paragraph 2(g)(iv).

(*g*) The Board shall:

(i) Adopt by-laws for the governance of the Institute in accordance with this Agreement, including by-laws for the implementation of the provisions of article IX, paragraphs 3 and 4;

(ii) Determine the Institute's policies and approve its work program;

(iii) Select the Director and external auditor of the Institute;

(iv) Approve the Institute's annual budget, audited financial statements and reports;

(v) Appoint members of the Advisory Committee; and

(vi) Approve agreements to be concluded under article VIII.

3. *Director and Staff*

(*a*) The Director shall be chief of the operating staff of the Institute and shall, under the direction of the Board:

(i) Conduct the ordinary business of the Institute;

(ii) Represent the Institute in its dealings with third parties; and

(iii) Do and perform all other acts necessary to further the purpose of the Institute.

(*b*) The Director shall serve for a term of two years, subject to renewal.

(c) The Director shall be responsible entirely to the Board, and to no other authority, for operating and managing the Institute in accordance with this Agreement, the by-laws and other decisions of the Board.

(*d*) Subject to the general control of the Board, the Director shall be responsible for the organization, appointment and dismissal of the staff of the Institute. In appointing the staff, the Director shall secure the highest standards of efficiency and of technical competence.

4. *Advisory Committee*

The Advisory Committee shall consist of members appointed by the Board, including representatives of countries referred to in Article II, paragraph 1, to advise it on the Institute's general training policies and programs.

Article VI

ASSOCIATE MEMBERS

1. The Board may appoint major contributors to the Institute as Associate Members for such periods of time as it shall determine.

2. The Board may invite Associate Members to participate in its meetings for particular agenda items. Associate Members shall have no right to vote.

3. The Institute shall provide Associate Members with copies of its work program, annual budget, and of its annual report referred to in Article IX, paragraph 4.

Article VI

COOPERATIVE RELATIONSHIPS

The Institute may establish cooperative relationships with any public or private entity, including other training and teaching institutions.

Article VIII

PRIVILEGES AND IMMUNITIES

1. The Institute, the Members of the Board and their alternates, members of the Advisory Committee, the Director, staff and experts shall enjoy such privileges and immunities as agreed between the Institute and the Republic of Austria.

2. The Institute may conclude agreements with other countries in order to secure appropriate privileges and immunities.

Article IX

FINANCES AND REPORTS

1. The resources of the Institute shall include the following:

(*a*) Voluntary contributions by each Party;

(*b*) Contributions by the Republic of Austria;

(*c*) Contributions from other sources; and

(*d*) Income accruing from such contributions and other income.

2. The fiscal year of the Institute shall be the calendar year.

3. Each year, the Director shall prepare and submit to the Board, for its approval, the annual work program and budget.

4. Each year, the Director shall prepare and submit to the Board, for its approval, an annual report containing an audited statement of the Institute's accounts and a summary of the activities of the Institute. Such audit shall be conducted by an independent external auditor selected by the Board.

Article X

LIABILITY

1. No Party or Associate Member shall be required to provide financial support to the Institute beyond such contributions it has pledged.

2. The Parties shall not be responsible, individually or collectively, for any debts, liabilities, or other obligations of the Institute; a statement to this effect shall be included in each of the agreements concluded by the Institute under article VIII.

Article XI

Amendments

This Agreement may be amended only with the agreement of all Parties.

Article XII

Coming into force and depositary

1. This Agreement shall be open for signature by the following organizations: The Bank for International Settlements, the European Bank for Reconstruction and Development, the International Bank for Reconstruction and Development, the International Monetary Fund and the Organization for Economic Cooperation and Development.

2. This Agreement shall come into force upon signature by four of the above-named organizations and shall remain open for signature by such organizations for a period of one year from the date of its coming to force.

3. The Federal Minister for Foreign Affairs of the Republic of Austria shall be the depositary of this Agreement.

Article XIII

Settlement of disputes

Any dispute arising between the Institute and any Party or between any Parties under this Agreement shall be settled by negotiation or other agreed means of settlement.

Article XIV

Withdrawal

1. Any of the Parties may withdraw from this Agreement by written notification to the depositary. Such withdrawal shall become effective three months after receipt of such notification by the depositary.

2. Withdrawal from this Agreement by a Party shall not limit, reduce or otherwise affect its pledged contribution for the fiscal year in which it withdraws.

Article XV

Termination

1. The duration of this Agreement shall be five years from the date of its coming into force unless the Parties unanimously decide to extend the duration of this Agreement by one or more successive periods of twelve months. At the expiration of this initial term of five years or any extension thereof, the Parties shall forthwith wind up the Institute by written notification to the depositary. Any assets of the Institute remaining after payment of its legal obligations shall be disposed of in accordance with a decision of the Board.

2. Notwithstanding paragraph 1, the Parties acting unanimously may terminate this Agreement at any time and wind up the Institute by written notification to the depositary. Any assets of the Institute remaining after payment of its legal obligations shall be disposed of in accordance with a decision of the Board.

3. The provisions of this Agreement shall survive its termination to the extent necessary to permit an orderly disposal of assets and settlement of accounts.

Article XVI

ACCESSION

This Agreement shall be open for signature by such international organizations as may be decided by the Board.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement on the dates indicated below.

3. WORLD INTELLECTUAL PROPERTY ORGANIZATION

Trademark Law Treaty and Regulations.[17] Done at Geneva on 27 October 1994[18]

Article 1

ABBREVIATED EXPRESSIONS

For the purposes of this Treaty, unless expressly stated otherwise:

(i) "Office" means the agency entrusted by a Contracting Party with the registration of marks;

(ii) "registration" means the registration of a mark by an Office;

(iii) "application" means an application for registration;

(iv) references to a "person" shall be construed as references to both a natural person and a legal entity;

(v) "holder" means the person whom the register of marks shows as the holder of the registration;

(vi) "register of marks" means the collection of data maintained by an Office, which includes the contents of all registrations and all data recorded in respect of all registrations, irrespective of the medium in which such data are stored;

(vii) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, signed at Paris on 20 March 1883, as revised and amended;

(viii) "Nice Classification" means the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, signed at Nice on 15 June 1957, as revised and amended;

(ix) "Contracting Party" means any State or intergovernmental organization party to this Treaty;

(x) references to an "instrument of ratification" shall be construed as including references to instruments of acceptance and approval;

(xi) "Organization" means the World Intellectual Property Organization;

(xii) "Director General" means the Director General of the Organization;

(xiii) "Regulations" means the Regulations under this Treaty that are referred to in article 17.

Article 2

MARKS TO WHICH THE TREATY APPLIES

(1) [*Nature of marks*] (*a*) This Treaty shall apply to marks consisting of visible signs, provided that only those Contracting Parties which accept for registration three-dimensional marks shall be obliged to apply this Treaty to such marks.

(*b*) This Treaty shall not apply to hologram marks and to marks not consisting of visible signs, in particular, sound marks and olfactory marks.

(2) [*Kind of marks*] (*a*) This Treaty shall apply to marks relating to goods (trademarks) or services (service marks) or both goods and services.

(*b*) This Treaty shall not apply to collective marks, certification marks and guarantee marks.

Article 3

APPLICATION

(1) [*Indications or elements contained in or accompanying an application; fee*] (*a*) Any Contracting Party may require that an application contain some or all of the following indications or elements:

(i) A request for registration;

(ii) The name and address of the applicant;

(iii) The name of a State of which the applicant is a national if he is the national of any State, the name of a State in which the applicant has his domicile, if any, and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;

(iv) Where the applicant is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;

(v) Where the applicant has a representative, the name and address of that representative;

(vi) Where an address for service is required under article 4(2)(b), such address;

(vii) Where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration of priority that may be required pursuant to article 4 of the Paris Convention;

(viii) Where the applicant wishes to take advantage of any protection resulting from the display of goods and/or services in an exhibition, a declaration to that effect, together with indications in support of that declaration, as required by the law of the Contracting Party;

(ix) Where the Office of the Contracting Party uses characters (letters and numbers) that it considers as being standard and where the applicant wishes that the mark be registered and published in standard characters, a statement to that effect;

(x) Where the applicant wishes to claim color as a distinctive feature of the mark, a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color;

(xi) Where the mark is a three-dimensional mark, a statement to that effect;

(xii) One or more reproductions of the mark;

(xiii) A transliteration of the mark or of certain parts of the mark;

(xiv) A translation of the mark or of certain parts of the mark;

(xv) The names of the goods and/or services for which the registration is sought, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification;

(xvi) A signature by the person specified in paragraph (4);

(xvii) A declaration of intention to use the mark, as required by the law of the Contracting Party.

(*b*) The applicant may file, instead of or in addition to the declaration of intention to use the mark referred to in subparagraph (a)(xvii), a declaration of actual use of the mark and evidence to that effect, as required by the law of the Contracting Party.

(*c*) Any Contracting Party may require that, in respect of the application, fees be paid to the Office.

(2) [*Presentation*] As regards the requirements concerning the presentation of the application, no Contracting Party shall refuse the application,

(i) Where the application is presented in writing on paper, if it is presented, subject to paragraph (3), on a form corresponding to the application form provided for in the Regulations,

(ii) Where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the application is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (3), to the application Form referred to in item (I).

(3) [*Language*] Any Contracting Party may require that the application be in the language, or in one of the languages, admitted by the Office. Where the Office admits more than one language, the applicant may be required to comply with any other language requirement applicable with respect to the Office, provided that the application may not be required to be in more than one language.

(4) [*Signature*] (*a*) The signature referred to in paragraph (1)(a)(xvi) may be the signature of the applicant or the signature of his representative.

(*b*) Notwithstanding subparagraph (a), any Contracting Party may require that the declarations referred to in paragraph (1)(a)(xvii) and (b) be signed by the applicant himself even if he has a representative.

(5) [*Single application for goods and/or services in several classes*] One and the same application may relate to several goods and/or services, irrespective of whether they belong to one class or to several classes of the Nice Classification.

(6) [*Actual uses*] Any Contracting Party may require that where a declaration of intention to use has been filed under paragraph (1)(a)(xvii), the applicant furnish to the Office within a time limit fixed in its law, subject to the minimum time limit prescribed in the Regulations, evidence of the actual use of the mark, as required by the said law.

(7) [*Prohibition of other requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (4) and (6) be complied with in respect of the application. In particular, the following may not be required in respect of the application throughout its pendency:

(i) The furnishing of any certificate of, or extract from, a register of commerce;

(ii) An indication of the applicant's carrying on of an industrial or commercial activity, as well as the furnishing of evidence to that effect;

(iii) An indication of applicant's carrying on of an activity corresponding to the goods and/or services listed in the application, as well as the furnishing of evidence to that effect;

(iv) The furnishing of evidence to the effect that the mark has been registered in the register of marks of another Contracting Party or of a State party to the Paris Convention which is not a Contracting Party, except where the applicant claims the application of article 6 *quinquies* of the Paris Convention.

(8) [*Evidence*] Any Contracting Party may require that evidence be furnished to the Office in the course of the examination of the application where the Office may reasonably doubt the veracity of any indication or element contained in the application.

Article 4

Representation; Address for service

(1) [*Representatives admitted to practice*] Any Contracting Party may require that any person appointed as representative for the purposes of any procedure before the Office be a representative admitted to practice before the Office.

(2) [*Mandatory representation; Address for service*] (*a*) Any Contracting Party may require that, for the purposes of any procedure before the Office, any person who has neither a domicile nor a real and effective industrial or commercial establishment on its territory be represented by a representative.

(*b*) Any Contracting Party may, to the extent that it does not require representation in accordance with subparagraph (a), require that, for the purposes of any procedure before the Office, any person who has neither a domicile nor a real and effective industrial or commercial establishment on its territory have an address for service on that territory.

(3) [*Power of attorney*] (*a*) Whenever a Contracting Party allows or requires an applicant, a holder or any other interested person to be represented by a representative before the Office, it may require that the representative be appointed in a separate communication (hereinafter referred to as "power of attorney") indicating the name of, and signed by, the applicant, the holder or the other person, as the case may be.

(*b*) The power of attorney may relate to one or more applications and/or registrations identified in the power of attorney or, subject to any exception indicated by the appointing person, to all existing and future applications and/or registrations of that person.

(*c*) The power of attorney may limit the powers of the representative to certain acts. Any Contracting Party may require that any power of attorney under which the representative has the right to withdraw an application or to surrender a registration contain an express indication to that effect.

(*d*) Where a communication is submitted to the Office by a person who refers to himself in the communication as a representative but where the Office is, at the time of the receipt of the communication, not in possession of the required power of attorney, the Contracting Party may require that the power of attorney be submitted to the Office within the time limit fixed by the Contracting Party, subject to the minimum time limit prescribed in the Regulations. Any Contracting Party may provide that, where the power of attorney has not been submitted to the Office within the time limit fixed by the Contracting Party, the communication by the said person shall have no effect.

(*e*) As regards the requirements concerning the presentation and contents of the power of attorney, no Contracting Party shall refuse the effects of the power of attorney,

(i) Where the power of attorney is presented in writing on paper, if it is presented, subject to paragraph (4), on a form corresponding to the power of attorney Form provided for in the Regulations,

(ii) Where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the power of attorney is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (4), to the power of attorney Form referred to in item (I).

(4) [*Language*] Any Contracting Party may require that the power of attorney be in the language, or in one of the languages, admitted by the Office.

(5) [*Reference to power of attorney*] Any Contracting Party may require that any communication made to the Office by a representative for the purposes of a procedure before the Office contain a reference to the power of attorney on the basis of which the representative acts.

(6) [*Prohibition of other requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (3) to (5) be complied with in respect of the matters dealt with in those paragraphs.

(7) [*Evidence*] Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in any communication referred to in paragraphs (2) to (5).

Article 5

FILING DATE

(1) [*Permitted requirements*] (*a*) Subject to subparagraph (b) and paragraph (2), a Contracting Party shall accord as the filing date of an application the date on which the Office received the following indications and elements in the language required under article 3 (3):

(i) An express or implicit indication that the registration of a mark is sought;

(ii) Indications allowing the identity of the applicant to be established;

(iii) Indications sufficient to contact the applicant or his representative, if any, by mail;

(iv) A sufficiently clear reproduction of the mark whose registration is sought;

(v) The list of the goods and/or service for which the registration is sought;

(vi) Where article 3(1)(a)(xvii) or (b) applies, the declaration referred to in article 3(1)(a)(xvii) or the declaration and evidence referred to in article 3(1)(b), respectively, as required by the law of the Contracting Party, those declarations being, if so required by the said law, signed by the applicant himself even if he has a representative.

(*b*) Any Contracting Party may accord as the filing date of the application the date on which the Office received only some, rather than all, of the indications and elements referred to in subparagraph (a) or received them in a language other than the language required under article 3(3).

(2) [*Permitted additional requirement*] (*a*) A Contracting Party may provide that no filing date shall be accorded until the required fees are paid.

(*b*) A Contracting Party may apply the requirement referred to in subparagraph (a) only if it applied such requirement at the time of becoming party to this Treaty.

(3) [*Corrections and time limits*] The modalities of, and time limits for, corrections under paragraphs (1) and (2) shall be fixed in the Regulations.

(4) [*Prohibited of other requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) be complied with in respect of the filing date.

Article 6

Single registration for goods and/or services in several classes

Where goods and/or service belonging to several classes of the Nice Classification have been included in one and the same application, such an application shall result in one and the same registration.

Article 7

Division of application and registration

(1) [*Division of application*] (*a*) Any application listing several goods and/or services (hereinafter referred to as "initial application") may,

(i) At least until the decision by the Office on the registration of the mark,

(ii) During any opposition proceedings against the decision of the Office to register the mark,

(iii) During any appeal proceedings against the decision on the registration of the mark, be divided by the applicant or at his request into two or more applications (hereinafter referred to as "divisional applications") by distributing among the latter the goods and/or services listed in the initial application. The divisional applications shall preserve the filing date of the initial application and the benefit of the right priority, if any.

(*b*) Any Contracting Party shall, subject to subparagraph (*a*), be free to establish requirements for the division of an application, including the payment of fees.

(2) [*Division of Registration*] Paragraph (1) shall apply, *mutatis mutandis*, with respect to a division of a registration. Such a division shall be permitted:

(i) During any proceedings in which the validity of the registration is challenged before the Office by a third party,

(ii) During any appeal proceedings against a decision taken by the Office during the former proceedings,

provided that a Contracting Party may exclude the possibility of the division of registrations if its law allows third parties to oppose the registration of a mark before the mark is registered.

Article 8

SIGNATURE

(1) [*Communication on paper*] Where a communication to the Office of a Contracting Party is on paper and a signature is required, that Contracting Party:

(i) Shall, subject to item (iii), accept a handwritten signature,

(ii) Shall be free to allow, instead of a handwritten signature, the use of other forms of signature, such as a printed or stamped signature, or the use of a seal,

(iii) May, where the natural person who signs the communication is its national and such person's address is in its territory, require that a seal be used instead of a handwritten signature,

(iv) May, where a seal is used, require that the seal be accompanied by an indication in letters of the name of the natural person whose seal is used.

(2) [*Communications by telefacsimile*] (*a*) Where a Contracting Party allows the transmittal of communications to the Office by telefacsimile, it shall consider the communication signed if, on the printout produced by the telefacsimile, the reproduction of the signature, or the reproduction of the seal together with, where required under paragraph (1)(iv), the indication in letters of the name of the natural person whose seal is used, appears.

(*b*) The Contracting Party referred to in subparagraph (a) may require that the paper whose reproduction was transmitted by telefacsimile be filed with the Office within a certain period, subject to the minimum period prescribed in the Regulations.

(3) [*Communication by electronic means*] Where a Contracting Party allows the transmittal of communications to the Office by electronic means, it shall consider the communication signed if the latter identifies the sender of the communication by electronic means as prescribed by the Contracting Party.

(4) [*Prohibition of requirement of certification*] No Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature or other means of self-identification referred to in the preceding paragraphs, except, if the law of the Contracting Party so provides, where the signature concerns the surrender of a registration.

Article 9

CLASSIFICATION OF GOODS AND/OR SERVICES

(1) [*Indications of goods and/or services*] Each registration and any publication effected by an Office which concerns an application or registration and which indicates goods and/or services shall indicate the goods and/or services by their names, grouped according to the classes of the Nice Classification, and each group shall be preceded by the number of the class of that Classification to which that group of goods or services belongs and shall be presented in the order of the classes of the said Classification.

(2) [*Goods or services in the same class or in different classes*] (*a*) Goods or services may not be considered as being similar to each other on the ground that, in any registration or publication by the Office, they appear in the same class of the Nice Classification.

(*b*) Goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication by the Office, they appear in different classes of the Nice Classification.

Article 10

Changes in names or addresses

(1) [*Changes in the name or address of the holder*] (*a*) Where there is no change in the person of the holder but there is a change in his name and/or address, each Contracting Party shall accept that a request for the recordal of the change by the Office in its register of marks be made in a communication signed by the holder or his representative and indicating the registration number of the registration concerned and the change to be recorded. As regards the requirements concerning the presentation of the request, no Contracting Party shall refuse the request,

(i) Where the request is presented in writing on paper, if it is presented, subject to subparagraph (c), on a form corresponding to the request form provided for in the Regulations,

(ii) Where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to subparagraph (c), to the request form referred to in item (i).

(*b*) Any Contracting Party may require that the request indicate:

(i) The name and address of the holder;

(ii) Where the holder has a representative, the name and address of that representative;

(iii) Where the holder has an address for service, such address.

(*c*) Any Contracting Party may require that the request be in the language, or in one of the languages, admitted by the Office.

(*d*) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(*e*) A single request shall be sufficient even where the change relates to more than one registration, provided that the registration numbers of all registrations concerned are indicated in the request.

(2) [*Change in the name or address of the applicant*] Paragraph (1) shall apply, *mutatis mutandis*, where the change concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or his representative, the request otherwise identifies that application as prescribed in the Regulations.

(3) [*Change in the name or address of the representative or in the address for service*] Paragraph (1) shall apply, *mutatis mutandis*, to any change in the name or address of the representative, if any, and to any change relating to the address for service, if any.

(4) [*Prohibition of other requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) be complied with in respect of the request referred to in this Article. In particular, the furnishing of any certificate concerning the change may not be required.

(5) [*Evidence*] Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt the veracity of any indication contained in the request.

Article 11

CHANGE IN OWNERSHIP

(1) [*Change in the ownership of a registration*] (*a*) Where there is a change in the person of the holder, each Contracting Party shall accept that a request for the recordal of the change by the Office in its register of marks be made in a communication signed by the holder or his representative, or by the person who acquired the ownership (hereinafter referred to as "new owner") or his representative, and indicating the registration number of the registration concerned and the change to be recorded. As regards the requirements concerning the presentation of the request, no Contracting Party shall refuse the request,

(i) Where the request is presented in writing on paper, if it is presented, subject to paragraph (2)(a), on a form corresponding to the request form provided for in the Regulations,

(ii) Where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (2)(a), to the request form referred to in item (I).

(*b*) Where the change in ownership results from a contract, any Contracting Party may require that the request indicate that fact and be accompanied, at the option of the requesting party, by one of the following:

(i) A copy of the contract, which copy may be required to be certified, by a notary public or any other competent public authority, as being in conformity with the original contract;

(ii) An extract of the contract showing the change in ownership, which extract may be required to be certified, by a notary public or any other competent public authority, as being a true extract of the contract;

(iii) An uncertified certificate of transfer drawn up in the form and with the content as prescribed in the Regulations and signed by both the holder and the new owner;

(iv) An uncertified transfer document drawn up in the form and with the content as prescribed in the Regulations and signed by both the holder and the new owner.

(*c*) Where the change in ownership results from a merger, any Contracting Party may require that the request indicate that fact and be accompanied by a copy of a document, which document originates from the competent authority and evi-

dences the merger, such as a copy of an extract from a register of commerce, and that that copy be certified by the authority which issued the document or by a notary public or any other competent public authority, as being in conformity with the original document.

(*d*) Where there is a change in the person of one or more but not all of several co-holders and such change in ownership results from a contract or a merger, any Contracting Party may require that any co-holder in respect of which there is no change in ownership give his express consent to the change in ownership in a document signed by him.

(*e*) Where the change in ownership does not result from a contract or a merger but from another ground, for example, from operation of law or a court decision, any Contracting Party may require that the request indicate that fact and be accompanied by a copy of a document evidencing the change and that that copy be certified as being in conformity with the original document by the authority which issued the document or by a notary public or any other competent public authority.

(*f*) Any Contracting Party may require that the request indicate:

(i) The name and address of the holder;

(ii) The name and address of the new owner;

(iii) The name of a State of which the new owner is a national if he is the national of any State, the name of a State in which the new owner has his domicile, if any, and the name of a State in which the new owner has a real and effective industrial or commercial establishment, if any;

(iv) Where the new owner is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;

(v) Where the holder has a representative, the name and address of that representative;

(vi) Where the holder has an address for service, such address;

(vii) Where the new owner has a representative, the name and address of that representative;

(viii) Where the new owner is required to have an address for service under article 4(2)(b), such address.

(*g*) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(*h*) A single request shall be sufficient even where the change relates to more than one registration, provided that the holder and the new owner are the same for each registration and that the registration numbers of all registrations concerned are indicated in the request.

(*i*) Where the change of ownership does not affect all the goods and/or services listed in the holder's registration, and the applicable law allows the recording of such change, the Office shall create a separate registration referring to the goods and/or services in respect of which the ownership has changed.

(2) [*Language; Translation*] (*a*) Any Contracting Party may require that the request, the certificate of transfer or the transfer document referred to in paragraph (1) be in the language, or in one of the languages, admitted by the Office.

(*b*) Any Contracting Party may require that, if the documents referred to in paragraph (1)(b)(i) and (ii), (c) and (e) are not in the language, or in one of the languages, admitted by the Office, the request be accompanied by a translation or a certified translation of the required document in the language, or in one of the languages, admitted by the Office.

(3) [*Change in the ownership of an application*] Paragraphs (1) and (2) shall apply, *mutatis mutandis*, where the change in ownership concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or his representative, the request otherwise identifies that application as prescribed in the Regulations.

(4) [*Prohibition of other requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) be complied with in respect of the request referred to in this article. In particular, the following may not be required:

(i) Subject to paragraph (1)(c), the furnishing of any certificate of, or extract from, a register of commerce;

(ii) An indication of the new owner's carrying on of an industrial or commercial activity, as well as the furnishing of evidence to that effect;

(iii) An indication of the new owner's carrying on of an activity corresponding to the goods and/or services affected by the change in ownership, as well as the furnishing of evidence to either effect;

(iv) An indication that the holder transferred, entirely or in part, his business or the relevant goodwill to the new owner, as well as the furnishing of evidence to either effect.

(5) [*Evidence*] Any Contracting Party may require that evidence, or further evidence where paragraph (1)(c) or (e) applies, be furnished to the Office where that Office may reasonably doubt the veracity of any indication contained in the request or in any document referred to in the present Article.

Article 12

Correction of a mistake

(1) [*Correction of a mistake in respect of a registration*] (*a*) Each Contracting Party shall accept that the request for the correction of a mistake which was made in the application or other request communicated to the Office and which mistake is reflected in its register of marks and/or any publication by the Office be made in a communication signed by the holder or his representative and indicating the registration number of the registration concerned, the mistake to be corrected and the correction to be entered. As regards the requirements concerning the presentation of the request, no Contracting Party shall refuse the request,

(i) Where the request is presented in writing on paper, if it is presented, subject to subparagraph (c), on a form corresponding to the request form provided for in the Registration,

(ii) Where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to subparagraph (c), to the request form referred to in item (i).

(*b*) Any Contracting Party may require that the request indicate:

(i) The name and address of the holder;

(ii) Where the holder has a representative, the name and address of that representative;

(iii) Where the holder has an address for service, such address.

(*c*) Any Contracting Party may require that the request be in the language, or in one of the languages, admitted by the Office.

(*d*) Any Contracting Party may require that, in respect of the request, a fee be paid to the Office.

(*e*) A single request shall be sufficient even where the correction relates to more than one registration of the same person, provided that the mistake and the requested correction are the same for each registration and that the registration numbers of all registrations concerned are indicated in the request.

(2) [*Correction of a mistake in respect of an application*] Paragraph (1) shall apply, *mutatis mutandis*, where the mistake concerns an application or applications, or both an application or applications and a registration or registrations, provided that, where the application number of any application concerned has not yet been issued or is not known to the applicant or his representative, the request otherwise identifies that application as prescribed in the Regulations.

(3) [*Prohibition of other requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) and (2) be complied with in respect of the request referred to in this Article.

(4) [*Evidence*] Any Contracting Party may require that evidence be furnished to the Office where the Office may reasonably doubt that the alleged mistake is in fact a mistake.

(5) [*Mistakes made by the Office*] The Office of a Contracting Party shall correct its own mistakes, *ex officio* or upon request, for no fee.

(6) [*Uncorrectable mistakes*] No Contracting Party shall be obliged to apply paragraphs (1), (2) and (5) to any mistake which cannot be corrected under its law.

Article 13

Duration and renewal of registration

(1) [*Indications or elements contained in or accompanying a request for renewal; Fee*] (*a*) Any Contracting Party may require that the renewal of a registra-

tion be subject to the filing of a request and that such request contain some or all of the following indications:

(i) An indication that renewal is sought;

(ii) The name and address of the holder;

(iii) The registration number of the registration concerned;

(iv) At the option of the Contracting Party, the filing date of the application which resulted in the registration concerned or the registration date of the registration concerned;

(v) Where the holder has a representative, the name and address of that representative;

(vi) Where the holder has an address for service, such address;

(vii) Where the Contracting Party allows the renewal of a registration to be made for some only of the goods and/or services which are recorded in the register of marks and such a renewal is requested, the names of the recorded goods and/or services for which the renewal is requested or the names of the recorded goods and/or services for which the renewal is not requested, grouped according to the classes of the Nice Classification, each group preceded by the number of the class of that Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification;

(viii) Where a Contracting Party allows a request for renewal to be filed by a person other than the holder or his representative and the request is filed by such a person, the name and address of that person;

(ix) A signature by the holder or his representative or, where item (viii) applies, a signature by the person referred to in that item.

(*b*) Any Contracting Party may require that, in respect of the request for renewal, a fee be paid to the Office. Once the fee has been paid in respect of the initial period of the registration or of any renewal period, no further payment may be required for the maintenance of the registration in respect of that period. Fees associated with the furnishing of a declaration and/or evidence of use shall not be regarded, for the purposes of this subparagraph, as payments required for the maintenance of the registration and shall not be affected by this subparagraph.

(*c*) Any Contracting Party may require that the request for renewal be presented, and the corresponding fee referred to in subparagraph (b) be paid, to the Office within the period fixed by the law of the Contracting Party, subject to the minimum periods prescribed in the Regulations.

(2) [*Presentation*] As regards the requirements concerning the presentation of the request for renewal, no Contracting Party shall refuse the request,

(i) Where the request is presented in writing on paper, if it is presented, subject to paragraph (3), on a form corresponding to the request form provided for in the Regulations,

(ii) Where the Contracting Party allows the transmittal of communications to the Office by telefacsimile and the request is so transmitted, if the paper copy resulting from such transmittal corresponds, subject to paragraph (3), to the request form referred to in item (I).

(3) [*Language*] Any Contracting Party may require that the request for renewal be in the language, or in one of the languages, admitted by the Office.

(4) [*Prohibition of other requirements*] No Contracting Party may demand that requirements other than those referred to in paragraphs (1) to (3) be complied with in respect of the request for renewal. In particular, the following may not be required:

(i) Any reproduction or other identification of the mark;

(ii) The furnishing of evidence to the effect that the mark has been registered, or that its registration has been renewed, in the register of marks of any other Contracting Party;

(iii) The furnishing of a declaration and/or evidence concerning the use of the mark.

(5) [*Evidence*] Any Contracting Party may require that evidence be furnished to the Office in the course of the examination of the request for renewal where the Office may reasonably doubt the veracity of any indication or element contained in the request for renewal.

(6) [*Prohibition of substantive examination*] No Office of a Contracting Party may, for the purposes of effecting the renewal, examine the registration as to substance.

(7) [*Duration*] The duration of the initial period of the registration, and the duration of each renewal period, shall be 10 years.

Article 14

Observations in case of intended refusal

An application or a request under articles 10 to 13 may not be refused totally or in part by an Office without giving the applicant or the requesting party, as the case may be, an opportunity to make observations on the intended refusal within a reasonable time limit.

Article 15

Obligation to comply with the Paris Convention

Any Contracting Party shall comply with the provisions of the Paris Convention which concern marks.

Article 16

SERVICE MARKS

Any Contracting Party shall register service marks and apply to such marks the provisions of the Paris Convention which concern trademarks.

Article 17

REGULATIONS

(1) [*Content*] (*a*) The Regulations annexed to this Treaty provide rules concerning:

(i) Matters which this Treaty expressly provides to be "prescribed in the Regulations";

(ii) Any details useful in the implementation of the provisions of this Treaty;

(iii) Any administrative requirements, matters or procedures.

(*b*) The Regulations also contain Model International Forms.

(2) [*Conflict between the Treaty and the Regulations*] In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.

Article 18

REVISION; PROTOCOLS

(1) [*Revision*] This Treaty may be revised by a diplomatic conference.

(2) [*Protocols*] For the purposes of further developing the harmonization of laws on marks, protocols may be adopted by a diplomatic conference in so far as those protocols do not contravene the provisions of this Treaty.

Article 19

BECOMING PARTY TO THE TREATY

(1) [*Eligibility*] The following entities may sign and, subject to paragraphs (2) and (3) and article 20(1) and (3), become party to this Treaty:

(i) Any State member of the Organization in respect of which marks may be registered with its own Office;

(ii) Any intergovernmental organization which maintains an Office in which marks may be registered with effect in the territory in which the constituting treaty of the intergovernmental organization applies, in all its member States or in those of its member States which are designated for such purpose in the relevant application, provided that all the member States of the intergovernmental organization are members of the Organization;

(iii) Any State member of the Organization in respect of which marks may be registered only through the Office of another specified State that is a member of the Organization;

(iv) Any State member of the Organization in respect of which marks may be registered only through the Office maintained by an intergovernmental organization of which that State is a member;

(v) Any State member of the Organization in respect of which marks may be registered only through an Office common to a group of States members of the Organization.

(2) [*Ratification or accession*] Any entity referred to in paragraph (1) may deposit:

(i) An instrument of ratification, if it has signed this Treaty,

(ii) An instrument of accession, if it has not signed this Treaty.

(3) [*Effective date of deposit*] (*a*) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be,

(i) In the case of a State referred to in paragraph (1)(i), the date on which the instrument of that State is deposited;

(ii) In the case of an intergovernmental organization, the date on which the instrument of that intergovernmental organization is deposited;

(iii) In the case of a State referred to in paragraph (1)(iii), the date on which the following condition is fulfilled: the instrument of that State has been deposited and the instrument of the other, specified State has been deposited;

(iv) In the case of a State referred to in paragraph (1)(iv), the date applicable under (ii), above;

(v) In the case of a State member of a group of States referred to in paragraph (1)(v), the date on which the instruments of all the States members of the group have been deposited.

(*b*) Any instrument of ratification or accession (referred to in this subparagraph as "instrument") of a State may be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one other State or one intergovernmental organization, or the instruments of two other States, or the instruments of one other State and one intergovernmental organization, specified by name and eligible to become party to this Treaty, is or are also deposited. The instrument containing such a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is fulfilled. However, when the deposit of any instrument specified in the declaration is, itself, accompanied by a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

(*c*) Any declaration made under paragraph (b) may be withdrawn, in its entirety or in part, at any time. Any such withdrawal shall become effective on the date on which the notification of withdrawal is received by the Director General.

Article 20

Effective date of ratifications and accessions

(1) [*Instruments to be taken into consideration*] For the purposes of this article, only instruments of ratification or accession that are deposited by entities referred to in article 19(1) and that have an effective date according to article 19(3) shall be taken into consideration.

(2) [*Entry into force of the Treaty*] This Treaty shall enter into force three months after five States have deposited their instruments of ratification or accession.

(3) [*Entry into force of ratifications and accessions subsequent to the entry into force of the Treaty*] Any entity not covered by paragraph (2) shall become bound by this Treaty three months after the date on which it has deposited its instrument of ratification or accession.

Article 21

Reservations

(1) [*Special kinds of marks*] Any State or intergovernmental organization may declare through a reservation that, notwithstanding article 2(1)(a) and (2)(a), any of the provisions of articles 3(1) and (2), 5, 7, 11 and 13 shall not apply to associated marks, defensive marks or derivative marks. Such reservation shall specify those of the aforementioned provisions to which the reservation relates.

(2) [*Modalities*] Any reservation under paragraph (1) shall be made in a declaration accompanying the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the reservation.

(3) [*Withdrawal*] Any reservation under paragraph (1) may be withdrawn at any time.

(4) [*Prohibition of other reservations*] No reservation to this Treaty other than the reservation allowed under paragraph (1) shall be permitted.

Article 22

Transitional provisions

(1) [*Single application for goods and services in several classes; Division of application*] (*a*) Any State or intergovernmental organization may declare that, notwithstanding Article 3(5), an application may be filed with the Office only in respect of goods or services which belong to one class of the Nice Classification.

(*b*) Any State or intergovernmental organization may declare that, notwithstanding article 6, where goods and/or service belonging to several classes of the Nice Classification have been included in one and the same application, such application shall result in two or more registrations in the register of marks, provided that each and every such registration shall bear a reference to all other such registrations resulting from the said application.

(*c*) Any State or intergovernmental organization that has made a declaration under subparagraph (a) may declare that, notwithstanding article 7(1), no application may be divided.

(2) [*Single power of attorney for more than one application and/or registration*] Any State or intergovernmental organization may declare that, notwithstanding article 4(3)(b), a power of attorney may only relate to one application or one registration.

(3) [*Prohibition of requirement of certification of signature of power of attorney and of signature of application*] Any State or intergovernmental organization may declare that, notwithstanding article 8(4), the signature of a power of attorney or the signature by the applicant of an application may be required to be the subject of an attestation, notarization, authentication, legalization or other certification.

(4) [*Single request for more than one application and/or registration in respect of a change in name and/or address, a change in ownership or a correction of a mistake*] Any State or intergovernmental organization may declare that, notwithstanding article 10(1)(e), (2) and (3), article 11(1)(h) and (3) and article 12(1)(e) and (2), a request for the recordal of a change in name and/or address, a request for the recordal of a change in ownership and a request for the correction of a mistake may only relate to one application or one registration.

(5) [*Furnishing, on the occasion of renewal, of declaration and/or evidence concerning use*] Any State or intergovernmental organization may declare that, notwithstanding article 13(4)(iii), it will require, on the occasion of renewal, the furnishing of a declaration and/or of evidence concerning use of the mark.

(6) [*Substantive examination on the occasion of renewal*] Any State or intergovernmental organization may declare that, notwithstanding article 13(6), the Office may, on the occasion of the first renewal of a registration covering services, examine such registration as to substance, provided that such examination shall be limited to the elimination of multiple registrations based on applications filed ruing a period of six months following the entry into force of the law of such State or organization that introduced, before the entry into force of this Treaty, the possibility of registering service marks.

(7) [*Common provisions*] (*a*) A State or an intergovernmental organization may make a declaration under paragraphs (1) to (6) only if, at the time of depositing its instrument of ratification of, or accession to, this Treaty, the continued application of its law would, without such a declaration, be contrary to the relevant provisions of this Treaty.

(*b*) Any declaration under paragraphs (1) to (6) shall accompany the instrument of ratification of, or accession to, this Treaty of the State or intergovernmental organization making the declaration.

(*c*) Any declaration made under paragraphs (1) to (6) may be withdrawn at any time.

(8) [*Loss of effect of declaration*] (*a*) Subject to subparagraph (c), any declaration made under paragraphs (1) to (5) by a State regarded as a developing country in conformity with the established practice of th General Assembly of the United Nations, or by an intergovernmental organization each member of which is such a State, shall lose its effect at the end of a period of eight years from the date of entry into force of this Treaty.

(*b*) Subject to subparagraph (c), any declaration made under paragraphs (1) to (5) by a State other than a State referred to in subparagraph (a), or by an intergovernmental organization other than an intergovernmental organization referred to in subparagraph (a), shall lose its effect at the end of a period of six years from the date of entry into force of this Treaty.

(*c*) Where a declaration made under paragraphs (1) to (5) has not been withdrawn under paragraph (7)(c), or has not lost its effect under subparagraph (a) or (b), before 28 October 2004, it shall lose its effect on 28 October 2004.

(9) [*Becoming party to the Treaty*] Until 31 December 1999, any State which, on the date of the adoption of this Treaty, is a member of the International (Paris) Union for the Protection of Industrial Property without being a member of the Organization may, notwithstanding article 19(1)(i), become a party to this Treaty if marks may be registered with its own Office.

Article 23

Denunciation of the Treaty

(1) [*Notification*] Any Contracting Party may denounce this Treaty by notification addressed to the Director General.

(2) [*Effective date*] Denunciation shall take effect one year from the date on which the Director General has received the notification. It shall not affect the application of this Treaty to any application pending or any mark registered in respect of the denouncing Contracting Party at the time of the expiration of the said one-year period, provided that the denouncing Contracting Party may, after the expiration of the said one-year period, discontinue applying this Treaty to any registration as from the date on which that registration is due for renewal.

Article 24

Languages of the Treaty; Signature

(1) [*Original texts; Official texts*] (*a*) This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(*b*) At the request of a Contracting Party, an official text in a language not referred to in subparagraph (a) that is an official language of that Contracting Party shall be established by the Director General after consultation with the said Contracting Party and any other interested Contracting Party.

(2) [*Time limit for signature*] This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 25

Depositary

The Director General shall be the depositary of this Treaty.

4. INTERNATIONAL ATOMIC ENERGY AGENCY

Convention on Nuclear Safety[19] Done at Vienna on 17 June 1994[20]

PREAMBLE

The Contracting Parties

(i) Aware of the importance to the international community of ensuring that the use of nuclear energy is safe, well regulated and environmentally sound;

(ii) Reaffirming the necessity of continuing to promote a high level of nuclear safety worldwide;

(iii) Reaffirming that responsibility for nuclear safety rests with the State having jurisdiction over a nuclear installation;

(iv) Desiring to promote an effective nuclear safety culture;

(v) Aware that accidents at nuclear installations have the potential for transboundary impacts;

(vi) Keeping in mind the Convention on the Physical Protection of Nuclear Material (1979), the Convention on Early Notification of a Nuclear Accident (1986), and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986);

(vii) Affirming the importance of international co-operation for the enhancement nuclear safety through existing bilateral and multilateral mechanisms and the establishment of this incentive Convention;

(viii) Recognizing that this Convention entails a commitment to the application of fundamental safety principles for nuclear installations rather than of detailed safety standards and that there are internationally formulated safety guidelines which are updated from time to time and so can provide guidance on contemporary means of achieving a high level of safety;

(ix) Affirming the need to begin promptly the development of an international convention on the safety of radioactive waste management as soon as the ongoing process to develop waste management safety fundamentals has resulted in broad international agreement;

(x) Recognizing the usefulness of further technical work in connection with the safety of other parts of the nuclear fuel cycle, and that this work may, in time, facilitate the development of current or future international instruments;

Have agreed as follows:

Chapter 1. Objectives, Definitions and scope of application

Article 1

Objectives

The objectives of this Convention are:

(i) To achieve and maintain a high level of nuclear safety worldwide through the enhancement of national measures and international cooperation including where appropriate, safety-related technical cooperation;

(ii) To establish and maintain effective defences in nuclear installations against potential radiological hazards in order to protect individuals, society and the environment from harmful effects or ionizing radiation from such installations;

(iii) To prevent accidents with radiological consequences and to mitigate such consequences should they occur.

Article 2

Definitions

For the purpose of this Convention:

(i) "Nuclear installation" means for each Contracting Party any land-based civil nuclear power plant under its jurisdiction including such storage, handling and treatment facilities for radioactive materials as are on the same site and are directly related to the operation of the nuclear power plant. Such a plant ceases to be a nuclear installation when all nuclear fuel elements have been removed permanently from the reactor core and have been stored safely in accordance with approved procedures, and a decommissioning programme has been agreed to by the regulatory body;

(ii) "Regulatory body" means for each Contracting Party any body or bodies given the legal authority by that Contracting Party to grant licenses and to regulate the siting, design, construction, commissioning, operation or decommissioning of nuclear installations;

(iii) "Licence" means any authorization granted by the regulatory body to the applicant to have the responsibility for the siting, design, construction, commissioning, operation or decommissioning of a nuclear installation.

Article 3

Scope of Application

This Convention shall apply to the safety of nuclear installations.

Chapter 2. Obligations

(a) General provisions

Article 4

Implementing measures

Each Contracting Party shall take, within the framework of its national law, the legislative, regulatory and administrative measures and other steps necessary for implementing its obligations under this Convention.

Article 5

Reporting

Each Contracting Party shall submit for review, prior to each meeting referred to in article 20, a report on the measures it has taken to implement each of the obligations of this Convention.

Article 6

Existing nuclear installations

Each Contracting Party shall take the appropriate steps to ensure that the safety of nuclear installations existing at the time the Convention enters into force for that Contracting Party is reviewed as soon as possible. When necessary in the context of this Convention, the Contracting Party shall ensure that all reasonably practicable improvements are made as a matter of urgency to upgrade the safety of the nuclear installation. If such upgrading cannot be achieved, plans should be implemented to shut down the nuclear installation as soon as practically possible. The timing of the shutdown may take into account the whole energy context and possible alternatives as well as the social, environmental and economic impact.

(*b*) Legislation and regulation

Article 7

Legislative and regulatory framework

1. Each Contracting Party shall establish and maintain a legislative and regulatory framework to govern the safety of nuclear installations.

2. The legislative and regulatory framework shall provide for:

(i) The establishment of applicable national safety requirements and regulations;

(ii) A system of licensing with regard to nuclear installations and the prohibition of the operation of a nuclear installation without a licence;

(iii) A system of regulatory inspection and assessment of nuclear installations to ascertain compliance with applicable regulations and the terms of licences;

(iv) The enforcement of applicable regulations and of the terms of licences, including the suspension, modification or revocation.

Article 8

REGULATORY BODY

1. Each Contracting Body shall establish or designate a regulatory body entrusted with the implementation of the legislative and regulatory framework referred to in article 7, and provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities.

2. Each Contracting Party shall take the appropriate steps to ensure an effective separation between the functions of the regulatory body and those of any other body or organization concerned with promotion or utilization of nuclear energy.

Article 9

RESPONSIBILITY OF THE LICENSE-HOLDER

Each Contracting Party shall ensure that prime responsibility for the safety of a nuclear installation rests with the holder of the relevant license and shall take the appropriate steps to ensure that each such license holder meets its responsibility.

(*c*) General safety considerations

Article 10

PRIORITY TO SAFETY

Each Contracting Party shall take the appropriate steps to ensure that all organizations engaged in activities directly related to nuclear installations shall establish policies that give due priority to nuclear safety.

Article 11

FINANCIAL AND HUMAN RESOURCES

1. Each Contracting Party shall take the appropriate steps to ensure that adequate financial resources are available to support the safety of each nuclear installation throughout its life.

2. Each Contracting Party shall take the appropriate steps to ensure that sufficient numbers of qualified staff with appropriate education, training and retraining are available for all safety-related activities in or for each nuclear installation, throughout its life.

Article 12

HUMAN FACTORS

Each Contracting Party shall take the appropriate steps to ensure that the capabilities and limitations of human performance are taken into account throughout the life of a nuclear installation.

Article 13

QUALITY ASSURANCE

Each Contracting Party shall take the appropriate steps to ensure that quality assurance programmes are established and implemented with a view to providing confidence that specified requirements for all activities important to nuclear safety are satisfied throughout the life a nuclear installation.

Article 14

ASSESSMENT AND VERIFICATION OF SAFETY

Each Contracting Party shall take the appropriate steps to ensure that:

(i) Comprehensive and systematic safety assessments are carried out before the construction and commissioning of a nuclear installation and throughout its life. Such assessments shall be well documented, subsequently updated in the light of operating experience and significant new safety information, and reviewed under the authority of the regulatory body;

(ii) Verification by analysis, surveillance, testing and inspection is carried out to ensure that the physical state and the operation of a nuclear installation continue to be in accordance with its design, applicable national safety requirements, and operational limits and conditions.

Article 15

RADIATION PROTECTION

Each Contracting Party shall take the appropriate steps to ensure that in all operational states the radiation exposure to the workers and the public caused by a nuclear installation shall be kept as low as reasonably achievable and that no individual shall be exposed to radiation doses which exceed prescribed national dose limits.

Article 16

EMERGENCY PREPAREDNESS

1. Each Contracting Party shall take the appropriate steps to ensure that there are on-site and off-site emergency plans that are routinely tested for nuclear installations and cover the activities to be carried out in the event of an emergency.

For any new nuclear installation, such plans shall be prepared and tested before it commences operation above a low power level agreed by the regulatory body.

2. Each Contracting Party shall take the appropriate steps to ensure that, insofar as they are likely to be affected by a radiological emergency, its own population and the competent authorities of the States in the vicinity of the nuclear installation are provided with appropriate information for emergency planning and response.

3. Contracting Parties which do not have a nuclear installation on their territory, insofar as they are likely to be affected in the event of a radiological emergency at a nuclear installation in the vicinity, shall take the appropriate steps for the preparation and testing of emergency plans for their territory that cover the activities to be carried out in the event of such an emergency.

(*d*) Safety of installations

Article 17

SITING

Each Contracting Party shall take the appropriate steps to ensure that appropriate procedures are established and implemented:

(i) For evaluating all relevant site-related factors likely to affect the safety of a nuclear installation for its projected lifetime;

(ii) For evaluating the likely safety impact of a proposed nuclear installation on individuals, society and the environment;

(iii) For re-evaluating as necessary all relevant factors referred to in subparagraphs (i) and (ii) so as to ensure the continued safety acceptability of the nuclear installation;

(iv) For consulting Contracting Parties in the vicinity of a proposed nuclear installation, insofar as they are likely to be affected by that installation and, upon request providing the necessary information to such Contracting Parties, in order to enable them to evaluate and make their own assessment of the likely safety impact on their own territory of the nuclear installation.

Article 18

DESIGN AND CONSTRUCTION

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The design and construction of a nuclear installation provides for several reliable levels and methods of protection (defense in depth) against the release of radioactive materials, with a view to preventing the occurrence of accidents and to mitigating their radiological consequences should they occur;

(ii) The technologies incorporated in the design and construction of a nuclear installation are proven by experience or qualified by testing or analysis;

(iii) The design of a nuclear installation allows for reliable, stable and easily manageable operation, with specific consideration of human factors and the man-machine interface.

Article 19

OPERATION

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The initial authorization to operate a nuclear installation is based upon an appropriate safety analysis and a commissioning programme demonstrating that the installation, as constructed, is consistent with design and safety requirements;

(ii) Operational limits and conditions derived from the safety analysis, tests and operational experience are defined and revised as necessary for identifying safe boundaries for operation;

(iii) Operation, maintenance, inspection and testing of a nuclear installation are conducted in accordance with approved procedures;

(iv) Procedures are established for responding to anticipated operational occurrences and to accidents;

(v) Necessary engineering and technical support in all safety-related fields is available throughout the lifetime of a nuclear installation;

(vi) Incidents significant to safety are reported in a timely manner by the holder of the relevant licence to the regulatory body;

(vii) Programmes to collect and analyze operating experience are established, the results obtained and the conclusions drawn are acted upon and that existing mechanisms are used to share important experience with international bodies and with other operating organizations and regulatory bodies;

(viii) The generation of radioactive waste resulting from the operation of a nuclear installation is kept to the minimum practicable for the process concerned, both in activity and in volume, and any necessary treatment and storage of spent fuel and waste directly related to the operation and on the same site as that of the nuclear installation take into consideration conditioning and disposal.

Chapter 3. Meetings of the Contracting Parties

Article 20

Review meetings

1. The Contracting Parties shall hold meetings (hereinafter referred to as "review meetings") for the purpose of reviewing the reports submitted pursuant to article 5 in accordance with the procedures adopted under article 22.

2. Subject to the provisions of article 24 sub-groups comprised of representatives of Contracting Parties may be established and may function during the review meetings as deemed necessary for the purpose of reviewing specific subjects contained in the reports.

3. Each Contracting Party shall have a reasonable opportunity to discuss the reports submitted by other Contracting Parties and to seek clarification of such reports.

Article 21

TIMETABLE

1. A preparatory meeting of the Contracting Parties shall be held not later than six months after the date of entry into force of this Convention.

2. At this preparatory meeting, the Contracting Parties shall determine the date for the first review meeting. This review meeting shall be held as soon as possible, but not later than thirty months after the date of entry into force of this Convention.

3. At each review meeting, the Contracting Parties shall determine the date for the next such meeting. The interval between review meetings shall not exceed three years.

Article 22

PROCEDURAL ARRANGEMENTS

1. At the preparatory meeting held pursuant to article 21 the Contracting Parties shall prepare and adopt by consensus Rules of Procedure and Financial Rules. The Contracting Parties shall establish in particular and in accordance with the Rules of Procedure:

(i) Guidelines regarding the form and structure of the reports to be submitted pursuant to article 5;

(ii) A date for the submission of such reports;

(iii) The process for reviewing such reports.

2. At review meetings the Contracting Parties may, if necessary, review the arrangements established pursuant to subparagraphs (i) to (iii) above, and adopt revisions by consensus unless otherwise provided for in the Rules of Procedure. They may also amend the Rules of Procedure and the Financial Rules, by consensus.

Article 23

EXTRAORDINARY MEETINGS

An extraordinary meeting of the Contracting Parties shall be held:

(i) If so agreed by a majority of the Contracting Parties present and voting at a meeting, abstentions being considered as voting; or

(ii) At the written request of a Contracting Party, within six months of this request having been communicated to the Contracting Parties and notification having been received by the secretariat referred to in article 28, that the request has been supported by a majority of the Contracting Parties.

Article 24

ATTENDANCE

1. Each Contracting Party shall attend meetings of the Contracting Parties and be represented at such meetings by one delegate, and by such alternates, experts and advisers as it deems necessary.

2. The Contracting Parties may invite, by consensus, any intergovernmental organization which is competent in respect of matters governed by this Convention to attend, as an observer, any meeting, or specific sessions thereof. Observers shall be required to accept in writing, and in advance, the provisions of article 27.

Article 25

SUMMARY REPORTS

The Contracting Parties shall adopt, by consensus, and make available to the public a document addressing issues discussed and conclusions reached during a meeting.

Article 26

LANGUAGES

1. The languages of meetings of the Contracting Parties shall be Arabic, Chinese, English, French, Russian and Spanish unless otherwise provided in the Rules of Procedure.

2. Reports submitted pursuant to article 5 shall be prepared in the national language of the submitting Contracting Party or in a single designated language to be agreed in the Rules of Procedure. Should the report be submitted in a national language other than the designated language, a translation of the report into the designated language shall be provided by the Contracting Party.

3. Notwithstanding the provisions of paragraph 2, if compensated, the secretariat will assume the translation into the designated language of reports submitted in any other language of the meeting.

Article 27

CONFIDENTIALITY

1. The provisions of this Convention shall not affect the rights and obligations of the Contracting Parties under their law to protect information from disclosure. For the purposes of this Article, "information" includes, *inter alia*, (i) personal data; (ii) information protected by intellectual property rights or by industrial or commercial confidentiality; and (iii) information relating to national security or to the physical protection of nuclear materials or nuclear installations.

2. When, in the context of this Convention, a Contracting Party provides information identified by it as protected as described in paragraph 1, such information shall be used only for the purposes for which it has been provided and its confidentiality shall be respected.

3. The content of the debates during the reviewing of the reports by the Contracting Parties at each meeting shall be confidential.

Article 28

SECRETARIAT

1. The International Atomic Energy Agency (hereinafter referred to as the "Agency") shall provide the secretariat for the meetings of the Contracting Parties.

2. The secretariat shall:

(i) Convene, prepare and service the meetings of the Contracting Parties;

(ii) Transmit to the Contracting Parties information received or prepared in accordance with the provisions of this Convention.

The costs incurred by the Agency in carrying out the functions referred to in subparagraphs (i) and (ii) above shall be borne by the Agency as part of its regular budget.

3. The Contracting Parties may, by consensus, request the Agency to provide other services in support of meetings of the Contracting Parties. The Agency may provide such services if they can be undertaken within its programme and regular budget. Should this not be possible, the Agency may provide such services if voluntary funding is provided from another source.

CHAPTER 4. FINAL CLAUSES AND OTHER PROVISIONS

Article 29

RESOLUTION OF DISAGREEMENTS

In the event of a disagreement between two or more Contracting Parties concerning the interpretation or application of this Convention, the Contracting Parties shall consult within the framework of a meeting of the Contracting Parties with a view to resolving the disagreement.

Article 30

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL, ACCESSION

1. This Convention shall be open for signature by all States at the headquarters of the Agency in Vienna from 20 September 1994 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention shall be open for accession by all States.

4. (i) This Convention shall be open for signature or accession by regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(ii) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties.

(iii) When becoming party to this Convention, such an organization shall communicate to the depositary referred to in article 34, a declaration indicating which States are members thereof, which articles of this Convention apply to it, and the extent of its competence in the field covered by those articles.

(iv) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 31

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit with the depositary of the twenty-second instrument of ratification, acceptance or approval, including the instruments of seventeen States, each having at least one nuclear installation which has achieved criticality in a reactor core.

2. For each State or regional organization of an integration or other nature which ratifies, accepts, approves or accedes to this Convention after the date of deposit of the last instrument required to satisfy the conditions set forth in paragraph 1, this Convention shall enter into force on the ninetieth day after the date of deposit with the depositary of the appropriate instrument by such a State or organization.

Article 32

AMENDMENTS TO THE CONVENTION

1. Any Contracting Party may propose an amendment to this Convention. Proposed amendments shall be considered at a review meeting or an extraordinary meeting.

2. The text of any proposed amendment and the reasons for its shall be provided to the Depositary who shall communicate the proposal to the Contracting Parties promptly and at least ninety days before the meeting for which it is submitted for consideration. Any comments received on such a proposal shall be circulated by the depositary to the Contracting Parties.

3. The Contracting Parties shall decide after consideration of the proposed amendment whether to adopt it by consensus, or, in the absence of consensus, to submit it to a Diplomatic Conference. A decision to submit a proposed amendment to a Diplomatic Conference shall require a two-thirds majority vote of the Contracting Parties present and voting at the meeting, provided that at least one half of the Contracting Parties are present at the time of voting. Abstentions shall be considered voting.

4. The Diplomatic Conference to consider and adopt amendments to this Convention shall be convened by the Depositary and held no later than one year after the appropriate decision taken in accordance with paragraph 3 of this article. The Diplomatic Conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted with a two-thirds majority of all Contracting Parties.

5. Amendments to this Convention adopted pursuant to paragraphs 3 and 4 above shall be subject to ratification, acceptance, approval or confirmation by the Contracting Parties and shall enter into force for those Contracting Parties which have ratified, accepted, approved or confirmed them on the ninetieth day after the receipt by the Depositary of the relevant instruments by at least three fourths of the Contracting Parties. For a Contracting Party which subsequently ratifies, accepts, approves or confirms the said amendments, the amendments will enter into force on the ninetieth day after that Contracting Party has deposited its relevant instrument.

Article 33

DENUNCIATION

1. Any Contracting Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one year following the date of the receipt of the notification by the depositary, or on such later date as may be specified in the notification.

Article 34

DEPOSITARY

1. The Director General of the Agency shall be the depositary of this Convention.

2. The Depositary shall inform the Contracting Parties of:

(i) The signature of this Convention and of the deposit of instruments of ratification, acceptance, approval or accession, in accordance with article 30;

(ii) The date on which the Convention enters into force, in accordance with article 31;

(iii) The notifications of denunciation of the Convention and the date thereof, made in accordance with article 33;

(iv) The proposed amendments to this Convention submitted by Contracting Parties, the amendments adopted by the relevant Diplomatic Conference or by the meeting of the Contracting Parties, and the date of entry into force of the said amendments, in accordance with article 32.

Article 35

AUTHENTIC TEXTS

The original of this Convention of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, who shall send certified copies thereof to the Contracting Parties.

ANNEX TO THE FINAL ACT OF THE DIPLOMATIC CONFERENCE SOME CLARIFICATION WITH RESPECT TO PROCEDURAL AND FINANCIAL ARRANGEMENTS, NATIONAL REPORTS AND THE CONDUCT OF REVIEW MEETINGS, ENVISAGED IN THE CONVENTION ON NUCLEAR SAFETY

1. Introduction

1.1 This document contains some clarification with respect to procedural and financial arrangements, national reports and the conduct of review meetings. It is understood that this document is not exhaustive and does not bind the Contracting Parties to the Convention on Nuclear Safety.

1.2 The basic principle underlying this clarification is that all provisions in the Rules of Procedure and the Financial Rules should be in strict conformity with the provisions of the Convention.

1.3 Nothing in the implementation of the Convention should dilute the national responsibility for nuclear safety.

2. National reports

In accordance with article 5 of the Convention, national reports should, as applicable, address each obligation separately. The reports should demonstrate how each obligation has been met, with specific references to, *inter alia*, legislation, procedures and design criteria. When a report states that a particular obligation has not been met, that report should also state what measures are being taken or planned to meet that obligation.

3. Conduct of review meetings

The purpose of review meetings referred to in article 20 of the Convention is the review by experts of national reports. The review process should:

— Include in-depth study of all national reports, to be conducted by each party before the meeting, as it deems appropriate;

— Be carried out through discussion among experts at the meeting;

— Take into consideration the technical characteristics of different types of nuclear installation and the likely radiological impact of potential accidents;

— Identify problems, concerns, uncertainties, or omissions in national reports, focusing on the most significant problems or concerns in order to ensure efficient and fruitful debate at the meetings; and

— Identify technical information and opportunities for technical cooperation in the interest of resolving safety problems identified.

4. Rules of Procedure for the meeting of the Parties

4.1 Equitable representation: Paramount importance should be given to technical competence in the election of chairmen and officers. Consideration should also be given to the overall membership of the Convention, including the geographical distribution of the Contracting Parties.

4.2 Decision-making: Every effort should be made to take decisions by consensus.

4.3 Confidentiality: The Rules of Procedure should be formulated so as to ensure that the provisions of article 27 are applied to all participants.

5. Financial rules

5.1 Costs to the secretariat: All costs to the secretariat, referred to in article 28 of the Convention, should be kept to a minimum. The Agency should be requested to provide other services in support of the meeting of the Contracting Parties, only if such services are deemed essential.

5.2 Costs to the Contracting Parties: In order to encourage the widest possible adherence to the Convention, the costs of preparing for and participating in review meetings should, while maintaining the effectiveness of the review, be limited by, *inter alia*, the following means:

— Limiting the frequency of review meetings; and

— Limiting the duration of the preparatory meeting and of review meetings.

NOTES

[1] Came into force on 1 January 1995.

[2] *International Legal Materials*, vol. XXXIII, No. 5 (1994), p. 1144.

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

[4] General Assembly resolution 48/263, annex; the text also has been reproduced in *International Legal Materials*, vol. XXX, No. 5 (1994), p. 1309.

[5] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII (United Nations publication, Sales No. E84.V.3), document A/CONF.62/122; see also United Nations publication, Sales No. E.83.V.5.

[6] Ibid., document A/CONF.62/121, Annex I; see also United Nations publication, Sales No. E.83.V.5.

[7] The Convention has not yet entered into force.

[8] General Assembly resolution 49/59, annex; the text also has been reproduced in *International Legal Materials*, vol. XXXIV, No. 2 (1995), p. 482.

[9] Not yet in force.

[10] *International Legal Materials*, vol. XXXIII, No. 6 (1994), p. 1540.

[11] Came into force on 26 December 1996.

[12] A/49/84/Add.2, appendix II; the text also has been reproduced in *Interntational Legal Materials*, vol. XXX, No. 5 (1994), p. 1328.

[13] Came into force on 28 February 1998.

[14] *Official Bulletin of the International Labour Organization*, vol. LXXVII, Series A, No. 2 (1994), p. 128.

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

[16] *International Legal Materials*, vol. XXXIII, No. 6 (1994), p. 1505.

[17] Came into force on date of signature.

[18] WIPO publication No. 225 (1994).

[19] Came into force on 24 October 1996.

[20] INFCIRC/449; see also *International Legal Materials*, vol. XXXIII, No. 6 (1994), p. 1514.

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. 636 (8 July 1994): Noll-Wagenfeld v. the Secretary-General of the United Nations[3]

Claim for earlier effective date for promotion to P-5 — Question of whether Respondent may consider staff member's past conduct whether or not subject of a prior Tribunal decision for promotion purposes — Discretion of Secretary-General in such cases

The applicant was appointed Senior Legal Officer, effective 1 April 1987, but was not promoted to the corresponding P-5 grade level, pursuant to information circular ST/IC/89/37 (dated 24 May 1989), the 1987 Senior Officer (P-5) Promotion Register. She instituted a recourse procedure against the non-inclusion of her name in the Register and argued, *inter alia*, that since her performance had been fully satisfactory the Appointment and Promotion Board undoubtedly had taken into account the facts of United Nations Administrative Tribunal Judgement No. 410, dated 13 May 1988, in which the Tribunal held that she was not entitled to receive her salary at the dependency rate and a dependency allowance in respect of two of her children as her husband, who was a staff member of the International Telecommunication Union, was also receiving his salary at the dependency rate in respect of their older daughter and such payment constituted duplicate payment of dependency benefits, prohibited under the United Nations Staff Regulations and Staff Rules. In her view, taking into account this Judgment amounted to a demotion, a disciplinary measure which could only be applied as a result of disciplinary proceedings.

Her recourse was unsuccessful and she, in April 1990, appealed to the Joint Appeals Board, in April 1990, which subsequently recommended that the applicant's case for promotion be considered fully and fairly under the guidelines for the 1987 promotion review. In January 1992, she was informed by the Director, Office of the Under-Secretary-General for Administration and Management, that the Secretary-General shared the Board's conclusion that her case fell within the guidelines of the 1987 promotion review, and that a full consideration did not appear to have been given in her case as one of the reasons given for rejection of her case was procedural grounds. At the same time, the Secretary-General reaffirmed to her that, in accordance with staff regulation 4.5, the paramount consideration in promotion was the necessity of securing the highest standards of efficiency, competence and integrity. Her case was remanded to the Appointment and Promotion Board for full and fair consideration of her eligibility for promotion under the 1987 review.

In July 1992, the Under-Secretary-General informed the applicant that based on the recommendation of the Appointment and Promotion Board that her promotion to P-5 not be retroactive but be closer to the date of the Board's deliberations on the case, her promotion was made effective 1 April 1992.

The applicant, however, contended that her effective date should have been 1 October 1987, the earliest possible date established in ST/IC/89/37 for promotion from the 1987 register, and that the Respondent could not lawfully take into account facts surrounding the Tribunal's Judgement No. 410 in establishing her effective date. The Tribunal noted that the information circular did not prohibit a later effective date, after 1 October 1987.

Regarding the issue of Judgement No. 410, the Tribunal held that it was proper for the Respondent to consider the facts surrounding the case, that it was neither arbitrary nor discriminatory for the Respondent to take them into account in exercising his discretion regarding the effective date of the Applicant's promotion. Those facts were not an extraneous factor that the Respondent was compelled to ignore in deciding whether and the extent to which the "highest" standards were met by the Applicant, or as to the manner in which the Respondent should exercise his discretion regarding the effective date of her promotion. The Tribunal further stated that it would have been an unwarranted intrusion for it to hold that the Respondent was required in such a context to disregard facts regarding a staff member's past conduct, whether or not that conduct happened to be involved in a prior Tribunal decision. What was said about those facts in Judgement No. 410, as well as what was said by the Applicant in her recourse, comprised material relevant to the criteria for promotion and the Respondent was entitled to appraise that material freely.

With respect to decisions involving promotions or their effective date, the Secretary-General's discretion is necessarily judgmental. So long as it is not tainted by arbitrariness, bias, discrimination, mistake of act, or other extraneous factors, it will not be overturned by the Tribunal. In this case, the Tribunal was unable to perceive the presence of any such flaws.

For the foregoing reasons, the application was rejected.

2. Judgement No. 638 (13 July 1994): Treggi v. the Secretary-General of the United Nations[4]

Claim for reimbursement of travel expenses — Question of obtaining authorization to travel on behalf of the Organization — Question of unjust enrichment on part of the Administration

The Applicant had obtained, in the absence of the Director, Programme Support Division, Department of Technical Cooperation and Development, endorsement of his travel to Moscow in conjunction with his home leave from the new Chief of Technical Assistance Recruitment and Administration Service, and a travel authorization was issued on 1 June 1991. When the Director learned of the Applicant's travel plans, he indicated in a note dated 21 June to the Chief of the Service that he would not approve the additional funds required for the Applicant's three-day stay in Moscow. On 25 June, in a memorandum purportedly copied to the Applicant the Director requested the amendment of the travel authorization, which was duly amended. The Applicant contended that when he picked up his ticket on 25 June he was informed by the United Nations Travel Agency that the Executive Office had amended his Travel Authorization and canceled the portion of his trip to Moscow. The Applicant, nevertheless, on 27 June departed Headquarters on authorized home leave to Rome, traveling to Moscow, that portion of the trip having been paid for out of his own pocket. On his three-day stopover in Moscow, he met with government officials to discuss the participation of Soviet national experts in the United Nations programme of technical assistance. On 19 August, the Applicant submitted a report

of his mission to the Under-Secretary-General, and on 11 September, he filed a claim for reimbursement for the portion of the ticket for which he paid (US$ 575.00) and daily subsistence allowance for three days in Moscow and Leningrad ($615.00), which was denied.

The Applicant appealed this decision, claiming that he had acted in good faith. He was ultimately informed by the Assistant Secretary-General for Human Resources Management that his case had been re-examined in the light of the Joint Appeals Board report, but although it was regretted that the Applicant was not informed of the decision to cancel the official travel to Moscow as soon as that decision had been taken, the Secretary-General agreed with the conclusion reached by the majority of the Panel that the Applicant was on notice that the travel authorization to Moscow had been canceled.

Upon consideration by the Tribunal, it noted staff rule 107.6 which states:

> "Before travel is undertaken it shall be authorized in writing. In exceptional cases, staff members may be authorized to travel on oral orders, but such oral authorization shall require written confirmation. A staff member shall be personally responsible for ascertaining that he or she has the proper authorization before commencing travel."

In the Tribunal's view, this rule clearly established that the onus was on the Applicant to determine whether he was authorized to travel, even thought the Tribunal was also of the view that the Respondent used poor judgment when it left it to the Travel Agency to convey to the Applicant that his travel authorization had been changed. The Applicant had alleged that he never received a copy of the memorandum of 25 June amending the travel authorization, an allegation that was not disputed by the Respondent.

The Tribunal was of the opinion that the Applicant had acted in good faith. He was acutely aware that this mission to the Soviet Union had been planned and canceled twice in the past at the last minute, and believing some administrative misunderstanding had occurred, he paid the travel costs in order to avoid another embarrassing cancellation. Nevertheless, the Applicant did have two days to verify with his supervisors whether the trip was indeed authorized; however, this omission in the Tribunal's view did not detract from the Applicant's good faith.

As regards the Applicant's claim for reimbursement of his travel expenses, on the basis of the general legal principle of the prohibition of unjust enrichment, the Tribunal was of the view that since the Administration benefited from the fruit of the Applicant's work the Applicant was therefore entitled to be reimbursed for his expenses. The Tribunal noted that had the Respondent been steadfast in his assertion that the Applicant misrepresented his presence as being on official business and rejected the product of the Applicant's undertaking in the Soviet Union, then it could have been argued that the Respondent did not gain from it.

The Respondent was, therefore, ordered to pay to the Applicant the amount of $1,190.00, corresponding to his travel expenses.

3. Judgement No. 656 (21 July 1994): Kremer & Gourdon v. the Secretary-General of the United Nations[5]

Claim for repatriation grant — Construction of the whole text and not one section alone is important principle of interpretation — Ascertaining the purpose of a provision is part of interpretation process — Interpretation leading to a reason-

able result should be selected over one leading to an unreasonable result — Question of equality of treatment — Question of stare decisis

The Tribunal considered the two applications jointly as the issues presented by the Applicants were identical, i.e., French nationals denied repatriation grant because they resided in France while working in the United Nations Office at Geneva when they separated from the Organization and relocated within France.

Upon review of the case, the Tribunal held that the Applicants were entitled to the repatriation grant. The Tribunal cited the relevant rules:

> Staff rule 109.5(i)
>
> "No payments shall be made to … any staff member who is residing at the time of separation in his or her home country while performing official duties. A staff member who, after service at a duty station outside his or her home country, has served at a duty station within that country may be paid on separation, subject to paragraph (d) above, a full or partial repatriation grant at the discretion of the Secretary-General."
>
> Staff rule 109.5(d)
>
> "Payment of the repatriation grant shall be subject to the provision by the former staff member of evidence of relocation away from the country of the last duty station."
>
> Annex IV
>
> "In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to a repatriate … Staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station."

It was the Tribunal's view that an important principle of interpretation is that construction was to be made of the text as a whole, and not of one section alone, and, therefore, staff rule 109.5(i) should be construed with reference to the context and with reference to other provisions, namely, staff rule 109.5(d) and Annex IV to the United Nations Staff Regulations and Rules. In this regard, both section 109.5(d) and Annex IV specifically refer to the "duty station" which the individual must leave in order to be entitled to the repatriation grant. Leaving the country of the "duty station" is the pivotal and determining condition of eligibility; entitlement to the grant subject to any nationality condition is not mentioned. The Respondent's interpretation of staff rule 109.5(i) which uses the concept of "residence" as the condition for eligibility leads to illogical and unfair results for it does not take into account the other relevant provisions.

The Tribunal considered that the majority opinion of the Tribunal in the *Rigoulet* case (Judgement No. 408, 1987) concerning the interpretation of staff rule 109.5(i) should be regarded as concerning a staff member performing official duties in his/her home country. Otherwise, the expression "performing official duties" would be superfluous. In addition, as noted in the dissenting opinion of the case "according to a consistent rule of interpretation, the provision to be interpreted must produce a useful effect" (para. XIII).

The Tribunal further considered that it was helpful to refer to the original purpose of the grant, as one of the goals of interpretation is to discover the true intention of the original drafters. It was concluded that the true intention of the United Nations in drafting these rules was to provide staff members payment for relocation expenditures; the point of departure was the country of the duty station. Upon moving to Paris, both Applicants incurred relocation expenditures, and to deny them the repatriation grant based on its interpretation of staff rule 109.5(I), the Organization would thwart the object of these rules.

The Respondent had claimed that his position was justified by the "straightforward application" of staff rule 109.5(i), suggesting that this provision concerned staff members who performed official duties in a country other than their home country, while residing in their home country. However, in the Tribunal's view, such a literal application of a rule is possible only if the rule itself is clear and unambiguous. Furthermore, the Respondent's interpretation is inconsistent with the reading of annex IV to the Staff Regulations which stipulates in part that "staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station." The Tribunal's view was that relocation and the consequent payment of the repatriation grant were contingent upon the location of the duty station and not the location of the staff member's residence. A person remaining in the country of the duty station was not entitled to the repatriation grant. Therefore, it was logical that staff members who relocate to a country outside the duty station were entitled to the repatriation grant. Both Applicants in question relocated to Paris.

The Tribunal recognized that the language of staff rule 109.5(i) could be subject to two interpretations, but it was of the belief that it should reject the interpretation leading to an unreasonable result and adopt the interpretation leading to a reasonable and just result, which was the interpretation adopted in the dissenting opinion of the *Rigoulet* judgement.

The Tribunal noted that this premise appeared to have been recognized and adopted by almost all the international organizations based in Geneva whose staff rules contain similar provisions. These international organizations who operated within the ambit of the common system of the United Nations pay the repatriation grant to all French staff members serving in Geneva and residing in the adjacent French territory upon their relocation to another part of France. Citing the principle of equality of treatment, the Tribunal further noted that only the United Nations and the GATT apply a different policy and refused entitlement in these cases.

Regarding the principle of *stare decisis*, the Tribunal was not convinced that it could not reverse one of its own previous findings. Indeed, there were many jurisdictions in which courts can, and do, reverse their previous decisions. The Tribunal, therefore concluded that both Applicants were entitled to the repatriation grant and ordered the payment of the grant.

4. Judgement No. 671 (4 November 1994): Grinblat v. the Secretary-General of the United Nations[6]

Non-inclusion in shortlist for promotion to P-5 — Secretary-General's bulletin ST/SGB/237 — Nature of affirmative action measures in the United Nations Secretariat — Remedy in case where Applicant not given fair consideration for promotion

The Applicant, who was at the P-4 level and assigned to the Estimates and Projections Section of the Population Division, applied for the P-5 level post of Chief, Population Trends and Structure Section, in the same Division, but ultimately

was not selected. He appealed, claiming that he was more qualified than either of the two female candidates shortlisted for the post, and the decision not to shortlist him was motivated by prejudice against his gender.

The Tribunal noted that under the express language of administrative instruction ST/AI/338 on the Vacancy Management and Staff Redeployment System (VMS), the system in effect at the time the selection for the post was conducted, the Appointment and Promotion Board (APB), in preparing a short list, was to determine who among the applicants were best qualified. APB also took into account in the selection process the Secretary-General's bulletin ST/SGB/237, of 18 March 1991, which states:

> "… the following policy shall apply in the area of assignment and promotion:
>
> "In departments and offices with less than 35 per cent women overall, and in those with less than 25 per cent women at levels P-5 and above, vacancies overall and in the latter group, respectively, shall be filled, when there are one or more female candidates whose qualifications match all the requirements for a vacant post, by one of these female candidates."

In the Respondent's view, ST/SGB237 permitted APB to exclude from a shortlist men whose qualifications were equal to those of qualified women. The Tribunal noted that with regard to the bulletin, its policies, to the extent that they were authorized by the Charter of the United Nations and the General Assembly, may be implemented by an APB in accordance with the functions of APB specified in ST/AI/338 and its addenda. That administrative instruction defines the role of the APB and has the same effect as a staff rule. However, the Tribunal considered that nothing in ST/AI/338 and its addenda instructed or authorized APB to implement a policy of excluding equally qualified male candidates from a shortlist in order to ensure that only females could be considered for promotion to a vacant post.

The Tribunal further noted that ST/SGB237 had been issued in response to the fifth report of the Steering Committee for the Improvement of the Status of Women in the Secretariat, and contained recommendations of various specific measures thought to be in keeping with the requests in General Assembly resolutions for continued improvement of the status of women in the Secretariat. The Respondent further argued that, as could be seen from the ST/SGB/237 promotion policy, in certain cases, female candidates should be promoted, if their qualifications met all the requirements for a vacant post, without regard to better qualified candidates. After consideration of relevant General Assembly resolutions (44/185 of 19 December 1989; 45/239 of 21 December 1990; and 46/100 of 16 December 1991), the Tribunal, however, concluded that the improvements in the status of women being urged through affirmative action measures were related to the principle of equal treatment for men and women, and were subject to the criterion of securing the highest standards of efficiency, competence and integrity. It followed that when APB issued the shortlist, based on the Secretary-General's bulletin, this was not in conformity with these General Assembly resolutions, to the extent that the bulletin was interpreted as purporting to authorize the promotion candidates solely on the basis of gender if they merely met the requirements of the vacant post without regard to whether there were better qualified candidates for the post.

The Tribunal recognized that there had been an unsatisfactory history with respect to the recruitment and promotion of women in the Organization that did not accord with Article 8 of the Charter of the United Nations and that, therefore, Article 8 permitted the adoption of reasonable affirmative action measures for improvement of the status of women. In evaluating the reasonableness of affirmative action measures, pertinent provisions of the Charter may not be ignored; it would be impermissible to view Article 8 as overriding Article 101(3), which states:

> "The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity …"

In that regard the Tribunal considered that, as long as affirmative action was required to redress the gender imbalance with which the Secretary-General and the General Assembly had been concerned, Article 8 would permit, as a reasonable measure, preferential treatment to women candidates where their qualifications were substantially equal to the qualifications of competing male candidates.

In the present case, however, APB had concluded that the Applicant's qualifications were equal to those of the shortlisted candidates and he therefore should have been included in the short list. It would then have been for the Department to appraise the candidates and make the selection. In doing so, if it also considered the shortlisted candidates equally qualified, it would presumably then take affirmative action goals into account.

The Tribunal did not consider that, in the circumstances of this case, particularly given that all the male candidates were deemed equally qualified by the APB and that the VMS was no longer in effect, it would be appropriate to rescind the Respondent's decision and order a new selection procedure for the post. Moreover, the post had been filled for two years by the successful candidate. Furthermore, it was far certain that, if the Applicant's name had been on the shortlist, he or any other male candidate would been selected and ultimately promoted. However, the Tribunal did award compensation to the Applicant for the infringement of his right to fair consideration by the APB (US$ 2,000).

5. Judgement No. 673 (4 November 1994): Hossain v. the Secretary-General of the United Nations[7]

Complaint against disciplinary procedure which resulted in the termination of the Applicant's appointment — Choice of appropriate disciplinary measure is within discretionary authority of the Secretary-General — Question of due process rights of Applicant — Question of factual findings in case

The Applicant, who had been a Programme Officer with the UNICEF office in Dhaka, and the immediate official responsible for the equipment, was confronted by the Senior Operations Officer and the Chief of the Supply Section of the same office, on 18 May 1992, with findings of an investigation of missing equipment. He was invited to resign from UNICEF and make restitution for the losses, or alternatively to prepare a response to the charges. A Joint Disciplinary Committee (JDC) was convened on 23 August 1992 to hear the case, which ultimately found that there was "no evidence to suggest it was consciously intended to defraud the organization but was rather a knowing and wilful approval for misappropriation and misuse of UNICEF equipment…," and further recommended that the Applicant be demoted. However, the Executive Director decided that the Applicant be separated from ser-

vice as a disciplinary measure under staff rule 110.3(a), receiving three months salary, instead of the normal 30 days salary, in lieu of notice. The Applicant subsequently appealed the decision, and the issue before the Tribunal was whether the termination of the Applicant's employment on grounds of misconduct was a valid exercise of the Executive Director's authority.

The Tribunal first considered that Article 101, paragraph 3, of the Charter of the United Nations and staff regulations 4.1 and 4.2 called for the recruitment of staff members "of the highest standards of efficiency, competence and integrity," and correlatively, the authority exists to terminate appointments when these standards were no longer met. In a case of misconduct, the choice of the appropriate disciplinary measure falls within the Secretary-General's discretionary power. In that regard, the Tribunal held in Judgement No. 479, *Caine* (1990), that:

> "… the Respondent is not required to establish beyond any reasonable doubt a patent intent to commit the alleged irregularities, or that the Applicant was solely responsible for them. The Tribunal's review of such cases is limited to determining whether the Secretary-General's action was vitiated by any prejudicial or extraneous factors, by significant procedural irregularity, or by a significant mistake of fact." (See also Judgements No. 424, *Ying* (1988) and No. 425, *Bruzual* (1988.)

The Applicant claimed that UNICEF officials in the Dhaka Office had continually "shifted the charges" against him. The central charge made by the Investigation Committee, in its report of 22 April 1992, was the Applicant's alleged involvement "in fraudulent activities which led to the unaccounted six TVs, six VCRs and other related supply and equipment". Along with this main charge, the Applicant was accused of issuing two gate passes to persons not employed by UNICEF. Based on these charges the Applicant was asked to resign. After a response to these charges from the Applicant, the Investigation Committee submitted a second report, dated 30 June 1992, which involved only two missing TVs and one screen. This report was transmitted to UNICEF headquarters, and the subsequent report of the Joint Disciplinary Committee convened to hear the case concluded that the Applicant was responsible for only one unaccounted TV and the unauthorized issuing of gate passes. In the view of the Tribunal, the investigative process, which appeared to have resulted in a frequent modification of the alleged facts underlying the charges against the Applicant, did not adequately respect the Applicant's right to due process.

It is a fundamental right of any staff member accused of misconduct to be informed of the charges against him or her and to be given an opportunity to respond to them. In the Tribunal's opinion the manner in which the Applicant was initially informed of the charges against him, with a simultaneous demand for his "resignation," deprived the Applicant of an opportunity to respond to the charges before a determination of his culpability was made. The Tribunal noted that there was some evidence that the Applicant may have been subjected to psychological pressure at the two-hour meeting to discuss the charges against him. The Applicant was suddenly faced with these charges, without any advance notice even of the meeting. Moreover, during that meeting, the Applicant requested and was denied permission to make a telephone call.

The Tribunal noted that the Executive Director had concluded that the Applicant's actions indicated "a clear pattern of abuse of UNICEF rules and regulations," which formed the basis of his decision to separate the Applicant for miscon-

duct. However, it was the Tribunal's view that the Executive Director's conclusion was not fully supported by the evidence before the Tribunal. The Tribunal further noted, however, that the fact that the Executive Director did not follow the recommendation of the JDC to demote the Applicant and decided instead to terminate the Applicant's appointment did not violate the Applicant's rights, as recommendations of the JDC are advisory.

The Tribunal, however, was of the view that the decision to separate the Applicant must be considered in the light of the procedural irregularities which took place in the initial stages of the investigation. The Executive Director's decision to separate the Applicant for misconduct, despite JDC's recommendation for more lenient disciplinary sanctions, was apparently based on a factual finding which was not fully supported by the findings of JDC. In addition, the procedural irregularities in the conduct of the initial phase of the investigation deprived the Applicant of his right to be informed of the charges against him and to present a defense. The Tribunal, therefore, concluded that the decision to terminate the Applicant's appointment was tainted by procedural irregularities. At the same time, the Tribunal agreed with the Executive Director's conclusion that the actions and omissions of the Applicant, on which his decision to separate him were based, constituted a breach of trust and displayed a lack of honesty and trustworthiness which demonstrated that the Applicant did not meet the standard required of an international civil servant.

For the reasons set forth above, the Tribunal ordered the Respondent to pay the Applicant five months of his net base salary at the time of his separation from service.

6. Judgement No. 686 (11 November 1994): Rebizov v. the Secretary-General of the United Nations[8]

Non-extension of fixed-term appointment — Question of a valid secondment — Right to be evaluated solely on objective grounds for extension

The Applicant's claim arose from his employment as a Russian translator with the United Nations Office at Geneva from 15 January 1989 to 14 June 1990. During this period, the Applicant was erroneously considered to be on secondment from the USSR and he was wrongly separated from the Organization on 14 June 1990 when his fixed-term appointment was not renewed. It was the view of the Tribunal that all evidence clearly established that the non-extension of the Applicant's fixed-term contract past 14 June 1990 was due to the lack of consent by the authorities of the USSR.

After the Tribunal subsequently rendered Judgement No. 482, *Oiu*, *Zhou* and *Yao* (1990), the Applicant's situation was reviewed by the Administration under provisions promulgated by the Secretary-General for implementing that judgement, which discussed the standards for a valid secondment. Accordingly, the Applicant's case was subsequently submitted to a Joint Working Group at UNOG for consideration of whether he should receive a further appointment. The report of the Joint Working Group, date 22 May 1991, contained strong reservations about the Applicant's performance expressed by the Chief of the Russian Translation Section, and based on this report, the Respondent argued that even if the Applicant had not been on secondment, his appointment would not have been renewed. Upon further investigation of questions concerning the Applicant's performance by the Tribunal, it concluded that the dominate role of the Chief of the Russian Translation Section in the Joint Working Group was highly questionable and that his actions were retaliatory in nature.

In view of the above, the Tribunal found that the Applicant's separation, based on the belief that he was on secondment and required the approval of the USSR which was not forthcoming, was improper. Furthermore, his right to be evaluated solely on objective grounds for an extension of his contract was violated by the injection of extraneous considerations. The Tribunal ordered the Respondent to pay to the Applicant an indemnity equivalent to 19 months of his net base salary at the time of his separation from service.

7. Judgement No. 687 (11 November 1994): Cure v. the Secretary-General of the United Nations[9]

Complaint against the disciplinary measure to demote the Applicant — Question of the validity of ECLAC internal rules — An act of wrongdoing is not justified by a defence that it is common practice

The Applicant, Chief of the Personnel Section at the Economic Commission for Latin America and the Caribbean in Santiago, was accused of abusing the duty-free importation privileges. Both the Applicant and his wife, also an ECLAC staff member, were allowed to make comments on the accusations, and a Joint Disciplinary Committee (JDC) was eventually convened to hear the case. The JDC found that the Applicant had taken advantage of his wife's position in the Organization to infringe the internal ECLAC regulations governing the use of import privileges, and recommended that the Secretary-General issue a written censure and that the staff member be fined US$ 750. After consideration of the case, the Secretary-General decided to demote the Applicant to the first step of the prior grade, with a two-year deferment of eligibility for within-grade increment.

The Applicant appealed this decision, arguing, *inter alia*, that because internal ECLAC rules were not part of the United Nations Staff Regulations and Rules that no act of unsatisfactory conduct could have occurred as defined by staff rule 110.1. Staff rule 110.1 prescribes that a staff member is to "comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules and other relevant administrative issuance". The Applicant contended that inasmuch as the rules promulgated by ECLAC were not formally approved by the General Assembly of the United Nations, they could not be considered as part of the Staff Regulations and Rules, and therefore the procedures for disciplinary action under chapter X of those Regulations and Rules could not be applied. The Tribunal had little doubt that the *Reglamento de Importacion* introduced by ECLAC was such a relevant issuance, irrespective of whether or not it was pursuant to an agreement between the Government of Chile and ECLAC. The Applicant could not escape the obligations imposed by the ECLAC internal regulations by arguing that they were not approved directly by the General Assembly. The Tribunal noted that subsidiary organs frequently have their own rules and regulations, which are applicable to all their staff members, provided, of course, that they are made known in advance, and there was no doubt that the Applicant in this case knew what was expected of him and did in fact generally follow the regulations; when he did not or could not or would not, he apologized or tried to explain away such lapses.

Moreover, the Tribunal noted that the Applicant could not take shelter, when accused of violating internal regulations and rules, by arguing that his actions did not violate the terms of an agreement concerning import privileges between ECLAC and the Government of Chile.

In respect of the charges brought against him, the Applicant offered some explanation for his actions. He contended that they had been guided by the common practice of "quota swapping," and of the retroactive approval of requests. Despite the evidence he submitted in support of his contentions, the Tribunal could not accept, as justification for any proven wrongdoing on the part of the Applicant, his argument that other staff members could have been equally remiss in importing duty-free goods.

As the to the Applicant's complaint that the disciplinary measures taken by the Respondent deviated from the milder recommendation of the JDC, the Tribunal, citing Judgements Nos. 479 (*Caine*), 425), (*Bruzual*) and 424 (*Ying*), found no evidence to suggest that the Secretary-General was influenced by any prejudicial or extraneous factors. Once the Secretary-General had decided, on the basis of such facts as were available to him, that the Applicant's conduct violated United Nations standards of integrity, he was free to decide what penalty under staff rule 110.3(a) would be appropriate.

B. Decisions of the Administrative Tribunal of the Internal Labour Organization[10]

1. Judgement No. 1304 (31 January 1994): Coe v. World Tourism Organization[11]

Termination of consultancy contract — Question of receivability — Complaint must be filed within 90 days of "final decision".

The complainant, who had signed a contract of appoint as a consultant with the World Tourism Organization (WTO) to be in charge of drawing up and carrying out a project for the development of tourism in Mozambique, to run from 21 October 1991 to 30 October 1993, was terminated on 24 June 1992.

After several incidents, the Secretary-General of WTO suspended the complainant from duty on 24 April 1992, in accordance with rule 29.4 of the Staff Rules pending a detailed report from him about the charges against him and his absence from duty for several weeks. The explanations he gave were found unsatisfactory and on 24 June the Secretary-General wrote to him again stating the charges and saying in conclusion that there was "no alternative but to terminate [his] contract without any notice or indemnity, as from 8 April 1992, date of [his] effective cessation of work". After further correspondence the Secretary-General wrote him a letter of 6 October 1992 confirming the decision of 24 June. The complainant appealed the decision to terminate his services.

WTO submitted that the complaint was irreceivable because the complainant had not filed it within the time limit in article VII(2) of the Tribunal's statute:

> "To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned…"

The Organization's case was that the decision to terminate the complainant's appointment was the one of 24 June 1992 and that his complaint, not having been filed until 30 December 1992, was out of time.

The complainant, on the other hand, argued that, pursuant to article VII(1) of the statute which states that a complaint shall not be receivable unless the impugned decision is a final one, the decision of 24 June 1992 was not to be treated as final, as

was clear from the negotiations that took place from July to September 1992 between him and the Organization to seek a settlement out of court of the dispute arising under his contract.

The Tribunal disagreed with the complainant's argument. He admitted to having received the letter of 24 June 1992 on 29 June. The letter set out explicitly the background to the case, described the efforts the Organization had made to get information and explanations before reaching a "final decision" and concluded with the express decision to terminate his appointment without notice or payment of indemnity. The Tribunal considered that the further action he took and any proposals that might have been made to him did not cause the Organization at any time to go back on the final decision which it had taken, and for which indeed it had stated solid grounds. The Tribunal concluded that the material date was 29 June 1992, when he had notice of that final decision, and that is when the 90 days began. The decision of 6 October 1992 did no more than confirm the earlier one and set off no new time limit for his appeal. Since he filed his complaint out of time it was irreceivable. The Tribunal, therefore, dismissed his complaint.

2. Judgement No. 1308 (31 January 1994): Ho v. World Health Organization[12]

Downgrading of duties in context of reorganization — Question of a "final" decision before lodging an appeal

The complainant was a staff member of the Pan American Health Organization (PAHO), and was promoted to P-3 as a Finance Officer and put in charge of imprest accounts in the department of Finance and Accounts. After a reorganization, a new organization chart was issued on 24 July 1990 and the complainant was appointed supervisor of the Headquarters Services Unit, the functions of which were different from those of the Imprest Accounts Unit, and put on a post that was graded P-2.

On 31 July 1990, the complainant wrote a memorandum to the Chief of the Department expressing dissatisfaction with the new arrangement. The complainant reported to his new unit of 1 August 1990 and during that month the two parties discussed the changes orally and in writing. In a memorandum of 2 August, the Chief of the Department stated, *inter alia*, that for the time being the grade P-2 was "considered appropriate … for the duties and responsibilities assigned" to the complainant's new post, though he would continue to hold grade P-3. After further discussion the Chief of Administration confirmed in a memorandum to him of 24 August that "next summer we would re-evaluate the question" as to whether or not reclassification of his post was required, but that "in the meantime, there would be no change from its present P-3 status."

Treating the memorandum of 24 August 1990 as a final decision, the complainant appealed in December 1990 alleging, *inter alia*, "demotion of duties". The Tribunal, however, concluded that the memorandum of 24 August 1990 from the Chief of Administration informing the complainant that although there would in the meantime be no change in the grading of his new post the question would be reviewed in the summer of 1991. That made it plain that no final decision had yet been taken on grading his new post P-2. Therefore, his complaint was irreceivable under article VII(1) of the Tribunal statute because what he was challenging was not a "final" decision. The Tribunal, therefore, dismissed the complaint.

3. Judgement No. 1312 (31 January 1994): Jiang v. International Atomic Energy Agency[13]

Non-extension of fixed-term contract — Discretionary decision is subject to review — Question of United Nations official's private life — Duty to protect independence of staff member

The complainant, a citizen of China, had joined the staff of IAEA as a translator at grade P-3 on a fixed-term contract, on 27 February 1988, to expire on 26 February 1991. He went on home leave to China in June 1989 but failed to return when the leave expired on 4 September 1989. In a letter he wrote on 2 September to the Director of the Division of Personnel, he explained that he had been unable to leave China because he had failed to obtain from the Government a "special card" proving that he "didn't take part in the latest counterrevolutionary rebellion", although he protested that he had never broken Chinese laws or regulations.

The Agency was informed by the Permanent Representative of China to the United Nations office at Vienna that the reason the complainant had not been allowed to return to duty was because he had filed for divorce and could not leave the country until the case was settled. The Agency was also informed that the complainant was accused of behavior against "law and morals," which was the defense put forward by the complainant's wife in the divorce proceedings. The Agency, not fully convinced that the complainant's situation was entirely a civil matter and had nothing to do with politics as the Chinese Government had indicated, informed him on 11 July 1990 that it had extended his contract to 26 February 1992. After the complainant was still refused an exit visa, the Director of Personnel made a trip to China whereupon he concluded that the complainant was being held in China, against his will but had a job at the Chinese Nuclear Information Centre and was performing it freely. It appeared that the reasons not to let him leave the country was not his political opinions, but based on his private life, and that the decision had been taken in accordance with Chinese administrative law.

It was on the strength of the Director's report that on 14 June 1991 the Agency decided against extending the complainant's appointment beyond 26 February 1992. The Director, in the letter of 14 June to the complainant notifying the decision of the non-extension, stated that the Agency had told the Chinese Government that the charges against him did not seem, particularly in the absence of court proceedings, to "constitute sufficient grounds for preventing" him from leaving the country. But the Director went on to observe that the privileges and immunities of Agency staff were not at stake since the Government's decision related not to his work for the Agency but to his "personal conduct". Furthermore, the Agency's "long-standing practice" was to apply "a rotation policy" to its Professional category of staff, and in line with that practice the tenure of appointment for Chinese translators had varied from three to five years. Since the complainant would have completed four years' service with the Agency by the end of his current contract it would not have been renewed according to the Agency. The complainant appealed the decision not to renew his contract.

The Tribunal had consistently held that a decision to renew or not to renew a fixed-term contract was at the discretion of the international organization, but the exercise of its discretion was subject to review, for example, where the decision rests on a mistake of fact or of law. The Tribunal noted that the Agency had made laudable attempts to get a change of mind in the Chinese Government. There was merit, too, in its contention that it "had to address the competing interests of provid-

ing protection to its staff member on the one hand, and of being able to perform its functions, on the other". However, the Tribunal considered that it was plain on the evidence that the complainant was barred from returning to perform his duties in Vienna for reasons that the Agency rightly considered to be immaterial. The initiation of divorce proceedings obviously afforded no proper grounds for breach of his rights as an international official. The circumstances relating to an official's private life — even though they might prompt civil or penal proceedings — were relevant in the area of administration only insofar as the might affect his performance of official duties. But in that event only the organization that employed him would be competent to determine the issue. The Agency had the duty to safeguard its employee's right to work in full independence for his employer.

This duty was the more compelling in this case because the reasons which it held to warrant non-renewal were highly dubious. The alleged policy of rotating Professional staff was not "long-standing" in its application to translators and indeed anything but consistent. Besides, even supposing that translators received tenure for only three to five years, it was difficult to see why the Agency could not extend the complainant's appointment beyond a total of four, as there was nothing in his performance that it could have pleaded in support of so limiting his total tenure.

The Tribunal concluded that the complainant's case should be referred to the Agency so that it might reinstate him in his contractual rights pending clarification of his position. The complainant was awarded costs of 5,000 Swiss francs.

4. Judgement No. 1317 (31 January 1994): Amira v. International Telecommunication Union[14]

Non-renewal of fixed-term appointment — Expiry of a fixed-term contract is a challengeable administrative decision — Discretionary decision subject to review — Duty to indicate reasons for non-renewal — Importance of procedural safeguards — Question of appropriate remedy

The complainant, who had been employed by the International Telecommunication Union as a telecommunications engineer on fixed-term appointments since September 1982, was appointed to the post of Senior Regional Representative for Africa at the D-1 level, in Addis Ababa, on 24 August 1986, for two years with the possibility of extension by another three years. The complainant had his appointment regularly extended and, in particular, by six months from 1 January to 30 June 1990. As a result of a reorganization, it was decided that the post the complainant occupied would be abolished and that his appointment would not be renewed beyond 31 December 1993. The complainant appealed, requesting reinstatement.

At the outset, the Tribunal noted that the ruling in the present case must be in line with what proved to be an important feature of the common law of international organizations, or at least of those that define contracts by category in determining relations with their employees. Firstly, consistent precedent had it that, even where an organization's staff regulations stated that a fixed-term contract was *ipso facto* extinguished on expiry, non-renewal was to be treated as a distinct and challengeable administrative decision. Secondly, another point firmly rooted in precedent was the Tribunal must in substance respect the exercise of discretion in any decision to terminate employment on expiry of the contract, but might review the lawfulness of any such decision and in doing so will, again by virtue of clear precedent, determine from the circumstances of each case:

— Whether the rules on competence, form and procedure were observed;

— Whether the official was given reasonable notice, even if the contract did not require it;

— Whether the decision was duly substantiated and the reasons for it were conveyed to the official in such a way that he might properly defend his interests;

— Whether some material fact was overlooked or there was some obvious mistake of fact or of law; and

— Whether the decision was taken in the organization's interests or shows some abuse of authority.

In the present case, the Tribunal found two obvious flaws in the impugned decision which alone were fatal. One was ITU's disregard of the basic procedural safeguards that were calculated to protect the staff against arbitrary management, including the inadequacy of the explanation for the decision. The other flaw was the failure of due process in the internal appeal proceedings.

The Tribunal noted that the communications from headquarters to the complainant showed an unusually cavalier attitude that failed in the duty of care ITU owed its staff, especially when they were cut off in places far from where decisions were being taken. Specifically, the Tribunal noted that without affording the slightest explanation or justification the ITU had suddenly announced in its letter of 27 April 1990 that it intended to terminate the relationship of employment forged by a series of contracts under which the complainant had served well. Furthermore, the Union showed unusual haste in getting rid of the complainant; he was refused an extension although it had been granted until 30 June 1993 to other staff in the same position as he.

The Tribunal, noting that there was a strong line of precedent on the duty to explain the reasons for non-renewal, considered that the duty to state the reasons for a decision forms part of any due administrative process. While not questioning that there was an objective need for the reforms implemented by the Union, the Tribunal was of the view that ITU should have explained to the complainant why, in view of his qualifications and experience, which the Secretary-General had praised, he would or would not have fitted the requirements of the new regional representatives' job descriptions.

Regarding the flaw concerning the appeals procedure, the Tribunal noted that an internal appeal procedure that worked properly was an important safeguard of staff rights and social harmony in an international organization and, as a prerequisite of judicial review, an indispensable means of preventing dispute from going outside the organization; and, in the present case, the Board did not function properly. The process took too long and the report which the Board submitted was open to even more serious objections: it was terse and offered no reasoning on issues of fact or of law. In the opinion of the Tribunal, the union was wholly to blame for those shortcomings. The Appeal Board was set up under the Staff Regulations and the Union had a duty to keep it at all times in proper working order. Indeed, regulation 11.1 expressly lay such obligation on the Secretary-General and because, by endorsing the report without comment or qualification, in his letter of 4 June 1992, the Secretary-General too had assumed full responsibility for its contents.

For the foregoing reasons the Tribunal concluded that the impugned decision could not stand and went further to discuss an appropriate remedy.

Reinstatement was a form of *restitutio in integrum* that would afford proper redress when the holder of an indefinite appointment had been wrongfully dismissed, and in the opinion of the Tribunal might consider ordering the reinstatement even of someone who held a fixed-term appointment provided that the circumstances were exceptional. Citing prior judgements, the Tribunal stated that it might do so when an organization made a practice of granting fixed-term appointments for the performance of continuing administrative duties; or when some inadmissible administrative practice flawed the contractual relationship; or when an untimely non-renewal prevented the accrual of pension entitlements.

The Tribunal, however, found no such circumstances in the present case. At all points in his career the complainant knew full well that his contractual position was precarious. What was more, the level and nature of his duties were such that he was unusually vulnerable to changes in the Union's policy on external relations. His main claim therefore failed, since reinstating him would in the circumstance be tantamount to direct interference by the Tribunal in the structuring of the ITU secretariat. The Tribunal did award a substantial award of damages for the material and professional injury that the Union's inadmissible manner of management had caused him. Because of the uncertainty he had been in for over three years — since the termination of his appointment at the end of September 1990 up to the date of this judgement — the equivalent of three years' salary and allowances was awarded. But the Union was allowed to subtract therefrom any professional earnings he might have had in the period. He was also awarded 5,000 Swiss francs in costs.

5. Judgement No. 1321 (31 January 1994): Bernard v. European Organization for Nuclear Research[15]

Request for payment of annual leave upon termination — Regulation R II 4.09 — An unlawful act or ex gratia benefit is not precedent

The complainant had been recruited by the European Organization for Nuclear Research (CERN) on 1 April 1968 and was an electronics technician on an indefinite appointment at the time of his dismissal on 29 February 1992, on the grounds of "disability confirmed by a medical certificate" and "not incurred in the course of duty". The complainant was informed by letter of 18 December 1991 that he would have been deemed to have taken the balance of his annual leave during the period of notice of dismissal. However, by letter of 26 march 1992 the complainant claimed the payment of the 40 days' leave he said he had been unable to use because he had been on sick leave during that period, which was denied.

CERN had argued, pursuant to regulation R II 4.09, that to qualify for compensation for the balance of annual leave the staff member must have had his appointment terminated and must have been prevented from taking his annual leave "owing to the requirements of duty". The Tribunal agreed with CERN's argument, stating that the notion of "requirements of duty" was relevant only where such requirements had prevented the staff member from taking annual leave, such as a heavy burden of work. In the present case, where the reason for not taking leave was an illness that was not service-incurred the case would fail to satisfy one of the conditions in regulation R II 4.09 since the reason was not "the requirements of duty".

The complainant had cited in support of his claim CERN's practice of paying compensation to the successors of a deceased staff member for any balance of annual leave at the date of death, regardless of whether the death was not service-incurred. However, the Tribunal's view was that he could not rely on that exception, because a staff member may not rely upon an unlawful act or a benefit granted *ex gratia* to other staff in support of his own claim.

For the above reasons, the complaint was dismissed.

6. Judgement No. 1323 (31 January 1994): Morris (No. 2) v. World Health Organization[16]

Non-renewal of a fixed-term appointment — Previous Judgement No. 891 — Question of privileged information in the context of selection of candidates for a post — Long-serving and deserving staff member's right to another post — Staff regulation 4.2 and 4.4 — Question of a remedy

The complainant had been employed as a dental officer by the World Health Organization at its Regional Office for the Americas since 1975 on a string of short-term appointments and in 1982 was assigned to a project in Guyana at grade P-4 until the funding ran out in December 1984, when he was released from the Organization upon expiry of his appointment. He appealed the decision, and subsequently the Tribunal ruled, in Judgement No. 891 of 30 June 1988, that WHO apply the reduction-in-force procedure under staff rule 1050.2. The reduction-in-force committee that the WHO accordingly set up found only one post to which the procedure might be applied and concluded that the complainant failed to meet the language requirements of that post. It therefore recommended paying him an indemnity in accordance with rule 1050.4 and giving him "priority in consideration of re-employment for any vacancies which may occur during the next twelve months in preference to any external candidate", which the Director-General accepted.

Subsequently, the complainant applied for a vacancy for a dental officer at grade P-4 in WHO's Oral Health Unit at headquarters in Geneva, but ultimately was informed that "another candidate whose qualifications and experience were more suited to the job was selected". An external candidate was selected. The complainant appealed this decision with headquarters Board of Appeal. Its report, dated 14 July 1992, was submitted to the Director-General, in which was stated that the technical officer's submission to the selection committee which had made the recommendation for filling the post had not been consistent with the duties and qualifications mentioned in the vacancy notice for the P-4 post and further concluded that established selection procedures were not fully adhered to. The Board recommended that the complainant be reconsidered "without delay" for the post which by then had again fallen vacant. The Director-General disagreed with the Board's conclusion about the technical officer's appraisal, though he gave no reasons for doing so. He accepted the recommendation for reconsidering the complainant for the post, but stated that it had been "frozen" since 1 August 1991 and he would be given "due consideration alongside other qualified candidates when the post was unfrozen". The complainant appealed this decision.

The Tribunal noted that WHO had argued before the Board that though the complainant was "a highly qualified Dental Officer" he "did not meet the standards required for the position", which contradicted the Director-General's statement that the complainant would be considered for the post alongside "other qualified candidates" when the post was unfrozen.

The Union relied on regulation 4.2:

> "The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity…"

The Organization had contended that he was entitled to preference over an external candidate, not as matter of course, but only if his qualifications were just as good, and that the external candidate was better qualified than he. The Tribunal noted that WHO offered no evidence to the Board of the external candidate's qualifications and on the grounds of privilege it had vouchsafed no information on that score to the Tribunal either, pursuant to a memorandum of 28 March 1993 from the Director-General to the Chairman of the Board of Appeals. The Tribunal, however, did not accept that the disclosure of a candidate's identity and qualifications may be properly regarded as likely in any way to inhibit the free expression of views by members of selection committees or to prejudice the interests of other candidates, as the memorandum had stated. In this case, the external candidate's qualifications were of essential importance to the selection committee in making its choice and to any appeal against the appointment made. The Tribunal cited Judgement 1177 (*Der Hovsepian*), in which was held that an item that forms part of the proceedings that led to the impugned decision may not be withheld from the Tribunal's scrutiny. The Tribunal concluded that the Organization's plea under this head failed because of the utter lack of evidence to suggest that the external candidate was better qualified than the complainant.

The Tribunal considered that even on the assumption that the external candidate was better qualified, the Organization misconstrued Manual paragraph II.9370, which stated that staff members whose appointments are terminated by reduction-in-force have preference over any external candidates for vacant posts for which they are qualified for a 12 month period. The external candidate had been selected within the complainant's twelve-month period. The Tribunal noted that the principle in regulation 4.2 on which the Organization had relied in selecting the external candidate was not absolute and was subject to the following express qualifications in 4.2 in fine and in 4.4:

> "4.2 … Due regard shall be paid to the importance of recruiting and maintaining the staff on as wide a geographical basis as possible."

> "4.4 … Without prejudice to the inflow of fresh talent at the various levels, vacancies shall be filled by promotion of persons already in the service of the Organization in preference to persons from outside. This preference shall also be applied on a reciprocal basis, to the United Nations and specialized agencies brought into relationship with the United Nations."

Moreover, the particular rule in Manual paragraph II.9.370 was not in conflict with the general provision in regulation 4.2. That manual paragraph and the Director-General's decision of 22 December 1988 entitled the complainant to preference over "any" external candidates, not just over less well qualified, or equally qualified, external candidates. In this regard, the Tribunal cited from Judgement No. 133 (*Hermann*):

"… it is consonant with the spirit of the rules and regulations that a staff member who has served the Organization in a fully satisfactory manner for a particularly long period, and who might reasonably have expected to finish his career in the same Organization, should be treated in a manner more appropriate to his situation. If he loses his post, he may claim to be appointed to any vacant post which he is capable of filling in a competent manner, whatever may be the qualifications of the other candidates. Not only does this interpretation of the relevant rules take account of the legitimate expectations of staff members, but it is not prejudicial to the Organization itself, which has every interest in employing staff members who have shown themselves deserving of confidence over a long period of employment."

The Tribunal did not send the case back for the Director-General to consider whether to give the complainant an appointment. The P-4 post was, it appeared, still frozen, and it was not know when it or any other suitable post would become available. The Tribunal noted that the complainant had served ITU for only just over nine years; there had been a similar lapse of time since his post was abolished, and he did not give any information about loss of earnings since leaving the Organization. In the circumstances, the Tribunal decided, in accordance with article VIII of its statute, to award him damages for all forms of injury in the amount of US$ 30,000, and for costs of $5,000.

7. Judgement No. 1324 (31 January 1994): Rivero v. European Patent Organization[17]

Request for change of home leave designation — Question of equal treatment — Question of change of home leave designation pursuant to article 60

The complainant, a citizen both of Argentina and Italy, joined the staff of the European Patent Organization (EPO) on 2 April 1990 as a patent examiner in Directorate General 1 at The Hague, and his place of home leave was designated Rome. His appointment was made conditional on his showing that he had Italian nationality. On 14 December 1990, he married an individual also with dual citizenship from Argentina and Italy.

By circular 197 of 20 December 1990, EPO informed staff of new arrangements regarding home leave and expatriation allowance and asked any staff who thought they might be affected to submit evidence of nationality and state what they regarded as "home" within the meaning of article 60 as amended from 1 July 1990.

Article 60 reads:

"Home leave

(1) Permanent employees who are nationals of a country other than the country in which they are employed shall receive eight working days' additional leave every two years to return home. Travel expenses for such leave shall be reimbursed…

(2) For the purposes of these Regulations, the home of such permanent employee shall be the place with which he has the closest connection outside the country in which he is permanently employed. This shall be

> determined when the employee takes up his duties, taking into account the place of residence of the employee's family, where he was brought up and any place where he possesses property.

Any review of this decision may take place only after a special decision by the President of the Office upon a reasoned request by the permanent employee".

In a letter of 14 August 1991, the complainant asked the President of the Office to change his home from Rome to Buenos Aires on the grounds that he had been born and brought up in Argentina, that his family and his wife lived there and that they were both citizens of that country. His request was rejected on the basis that home leave was generally meant to be in a "Contracting State" and EPO had recruited him as a citizen of such country, Italy. The complainant however pressed the issue, maintaining that his marriage had changed his personal situation since he joined the staff and that the country he had the "closest connection" with outside that of his duty station was Argentina. Again, his request was rejected and he appealed. The Appeals Committee unanimously allowed the appeal, but the President saw no reasons for review, on the following grounds: (1) the amendment of article 60 did not affect the procedure for review of a permanent employee's designated home; and (2) the reason was that the changes that had occurred in the complainant's personal circumstances since joining the staff did not warrant any change in his designated home.

The complainant appealed this decision, arguing that the Organization had granted home leave in Argentina to a staff member who had the nationality both of Germany and of that country, and new employees who were citizens of Argentina as well as some other country and who had their true "homes" in Argentina had automatically had "home" designated there. The complainant contended that those decisions were attributable to a change in the EPO policy which came in after article 60 was amended, and that the new policy allowed staff with dual nationality to change their designated home. Here, circumstances so warranted, to a place outside the territory of EPO member States. EPO disagreed with the complainant's contentions, explaining that in all those other cases but one the President of the Office was making the original designation of home, and here the decision concerned review of the designation already made. In the other case, the President found that special circumstances allowed for a change.

In the view of the Tribunal, the impugned decision rested on a misinterpretation of the principle of equal treatment by the Organization. In Judgement No. 1194 (*Vollering*) the Tribunal stated that principle in the following terms:

> "The case law says that for there to be breach of equal treatment of staff members who are in the same position in fact and in law. In other words, equal treatment means that like facts require like treatment in law and different facts allow of different treatment. It follows that treatment may vary provided that it is a logical and reasonable outcome of the circumstances."

In this regard, the Tribunal contended that there was no difference in substance between the original designation and the review of "home". In both cases the purport of the President's decision was the same: to determine the place where the employee may take home leave, and the original designation and the review cannot properly be made according to different criteria. It would offend against the principle of equal treatment the recruit who has strong ties with the country of one or

two nationalities should get the automatic designation of a place in that country as "home", while in identical circumstances another employee is refused designation of his home in that country simply because he is seeking review of a determination already made. The Tribunal concluded that since the distinction did not hold up in law, the impugned decision could not stand.

The Tribunal considered that the next question to be addressed was whether the complainant's circumstances warranted the change in the designation of home under article 60 of the Service Regulations. According to paragraph 2 of that article "the home of such permanent employee shall be the place with which he has the closet connection outside the country in which he is permanently employed," and the Organization must take into account "the place of residence of the employee's family, where he was brought up and any place where he possesses property". The Tribunal was satisfied on the evidence before it that the country with which the complainant had the "closet connection" was Argentina. He had been born in that country and did not acquire Italian citizenship, by *ius sanguinis*, until 1986, when he was already 24 years old. He had his primary, secondary and university education in Argentina and had done only post-graduate studies in Rome. His parents, grandparents and other relatives lived there. His wife was also a citizen of Argentina as well as Italy and had spent the greater part of her life in Argentina. They had married in that country in 1990. Since coming to Europe the complainant stated he had traveled regularly to Argentina and spent seven weeks a year there.

The Tribunal, therefore, concluded that the complainant qualified for review of the determination of his home under the second paragraph of article 60(2) of the Service Regulations, and his home must be changed accordingly. He was awarded 3,000 guilders in costs.

8. Judgement No. 1326 (31 January 1994): Gautrey v. International Telecommunication Union[18]

Request for termination indemnity from ITU after obtaining employment with another organization — Question of improper composition of the Appeal Board — Question of termination because of abolition of post from ITU or transfer to ILO from ITU — Question of breach of good faith of ITU

The complainant had worked as an English editor for the International Telecommunication Union on a permanent contract since 20 April 1988, when he was informed on 23 February 1990 that his post would be abolished at the end of the year, but that the Chief of Personnel and Social Protection Department would help him find a job in another organization. He was also informed in a conversation that his entitlements, taking account of his seniority in the United Nations system, came to some 90,000 Swiss francs, including repatriation grant and termination indemnity, which the Secretary-General of the Union had decided — as regulation 9.6(d) allowed — to increase by 50 per cent. On 4 September the complainant signed a two-year contract with the International Labour Organization with effect from 2 September 1990, and at the same time wrote to the Secretary-General of the Union about his entitlement under the rules to termination indemnity, which he stated he by no means intended to waive. In reply, in a letter of 13 September 1990 ITU Chief of Personnel informed him that the Secretary-General had decided as an exceptional measure to conserve his entitlement but only for two years as from 2 September 1990. The complainant appealed this decision to the Appeal Board on 20 February 1991.

In its report of 2 August 1991, the Board took the view that he had an acquired right to the termination indemnity and that his entitlement should be safeguarded whatever might happen. But before making a final recommendation the Board sought the views of the Secretary-General, which the Board interpreted to mean that the ITU would not be liable towards the complainant beyond the two years his contract was to run at ILO. The Board sent the Secretary-General an "amendment" to its report on 28 July in which it absolved the ITU of any liability towards the complainant. The ILO extended the complainant's appointment by one year on 6 October. The complainant appealed the Secretary-General's decision of 21 October endorsing the amended report, on the grounds of (1) improper composition of the Appeal Board; (2) breach of his right to termination indemnity; and (3) the Union's failure to act in good faith.

The complainant's main objective to the make-up of the Board was that not all of the members who signed the report of 2 August 1991 took part in the review of his case on 19 October 1992. The Union had pointed out that one member had retired and had to be replaced by an alternate, and when two other members refused to sit the Union had no choice but to appoint new members. The Tribunal was of the view that in these particular circumstances, the Board's membership was in keeping with the provisions of rule 11.1.1.3 and so it would serve no purpose to ask, as the complainant did, whether the Board's conclusions would have differed if its members had been as before.

Regarding the issue of the complainant's entitlement to termination indemnity, the Tribunal was agreement with ITU that there was no substance in the complainant's contention that his leaving the Union was attributable to the abolition of his post. The correspondence shows that he left ITU on transfer to the ILO under the Inter-Organization Agreement. The Tribunal noted that his case fell under paragraph 8(a) of the Agreement, which stated that "a staff member who is transferred will cease as from the date of transfer to have any contractual relationship with the releasing organization". Furthermore, the complainant could not rely *a contrario* on the fact that his case was not mentioned among those for which regulation 9.6 (e) excluded payment of termination indemnity since — as had been stated — his was a case of transfer under the Agreement, not of termination.

The Tribunal also found no more cogent his plea that payment of indemnity may be due to him for the loss of a fundamental term of his conditions of employment, namely, the security of a permanent appointment. He received only a fixed-term appointment from ILO. The Tribunal, recognizing that there were no provisions in the Regulations for the award of indemnities in cases other than those set out 9.6, considered that security of tenure in cases of transfer came under paragraph 8 (c) of the Agreement. In that regard, it was up to the ILO as the receiving organization to ensure that the complainant would not lose the security of a permanent appointment, but the complainant had failed to request ILO to comply with the provision, even though he was fully aware by 3 July 1990 of ILO's intention of offering him only a fixed-term contract, which he accepted without qualification on 4 September 1990.

The complainant had also argued that if he had let matters drag on for four months — from September to December 1990 — he would have had no difficulty in getting the indemnity and that he went to ILO only because his post was being done away with. In the Tribunal's view that argument would be sustainable only if by the time of his transfer to ILO his post had actually been abolished.

Lastly, the complainant had pleaded breach of good faith, the gist of it being the length of the internal proceedings. It took the Secretary-General two years to give him a final reply to his request of 25 October 1990 for review. Twenty months elapsed between the lodging of his appeal with the Appeal Board and its amended report and that was 16 months over the 14 weeks that regulation 11.1.1.4(f) was allowed. The Tribunal observed first that the alleged delay was not wholly the Secretary-General's fault. The rather long time which the Board took from the lodging of the complainant's appeal to the submission of its amended report was due partly to the Staff Council's having refrained from taking part in the Board's work from December 1991 to May 1992 and partly to changes in its membership. In any event such delay, in the Tribunal's view, was not in the circumstances of the case such as to impair the lawfulness of the impugned decision or cast doubt on the Union's good faith.

For the above reasons, the complaint was dismissed.

9. Judgement No. 1339 (13 July 1994): Grant v. World Health Organization[19]

Request for paternal leave — Maternity leave not a form of discrimination against men — Adoptive parents cannot be compared to natural parents in these circumstances — Question of other organizations providing for parental leave — Staff member's right to challenge staff rules, including those in place when he accepted employment

The complainant was a staff member of the World Health Organization at grade P-5 and his wife a staff member of the Office of the United Nations High Commissioner for Refugees at grade P-3 when the wife gave birth in September 1992. While both organizations' rules prescribed 16 weeks' maternity leave, both applied to their respective organizations for the grant of "parental" leave, the sixteen weeks' leave to be made available to them as a couple. In a memorandum of 23 July the Chief of the Personnel Administration Section of UNHCR answered the complainant's wife that she was entitled to the 16 weeks' maternity leave under the staff rules and that the entitlement of her husband to paternity leave was a matter for WHO to decide.

In a memorandum of 28 July to the complainant the Chief of Contract Administration of WHO referred to staff rule 760, which provided for the 16 weeks' maternity leave for a staff member appointed for a period of one year or more, and stated that he regretted that there was no provisions for paternity leave. The complainant appealed to WHO headquarters Board of Appeal, which held that the Administration had correctly applied rule 760 as it stood, but that it was "discriminatory against male staff members, bearing in mind the objectives of WHO and the United Nations family and the discrepancy with conditions applying to adoption leave", such leave which either sex might take, and the rule therefore should be reviewed by the Administration. The Director-General accepted the Board's recommendation, except for the part that recommended that the rule should be reviewed, as he felt that the Board had gone beyond its mandate. The complainant appealed this decision.

In the opinion of the Tribunal, the grant of maternity leave was not a form of discrimination against men but mere recognition of the needs specific to a woman when she gave birth; there were both physical and psychological reasons why a woman should be relieved of work before and after the birth. Since the nature of the father's involvement was quite different, like was not being compared with like.

The comparison that the complainant drew with the grant of leave on the adoption of a child was mistaken. The requirements of adoption being different from those of confinement, arrangements pertaining to adoption need not be specifically directed at the woman. There was no discrimination in favor of adoptive and against natural parents since the circumstances were not the same.

The Tribunal also did not accept the complainant's contention that allowing only women to take "parental leave" would put them at risk of discrimination in employment opportunities, because the complainant may only plead his own case, not that of others.

The fact that the International Committee of the Red Cross granted parental leave, or some countries did, was immaterial to the present case. In the view of the Tribunal, parental leave was something to be negotiated and agreed with the employer: it may not be claimed as of right.

The Tribunal disagreed with the Organization's contention that the complainant's case was misdirected on the grounds that on taking up employment he accepted its Staff Regulations and Rules and he ought to have made us of other means, such as staff union action, of putting forward his view and securing the introduction of paternity leave. An official's acceptance of the Regulations and Rules does not preclude his arguing that some provision of them is discriminatory as it affects him.

For the above reason, the complainant was dismissed.

10. Judgement No. 1344 (13 July 1994): Angius v. European Patent Organisation[20]

Allegations of discriminatory and punitive treatment — Question of receivability — Question of improving staff member's performance or punishing him for challenging the Administration — Breach of right to fair treatment

The complainant, who had joined the staff of the European Patent Organisation (EPO) in January 1980 as a search examiner at grade A3 in The Hague Office, had received reports appraising his performance up to 1989 as "very good". In August 1991 he had become aware that a search report of his had been changed without his knowledge, and on 20 August protested in writing to the Principal Director of Search.

After exchanges of correspondence he subsequently wrote a letter on 14 September 1992 to the President of EPO alleging various forms of discriminatory and "punitive" treatment by his supervisors, applying, among other things, for a formal inquiry into the matter and saying that, if his application was refused, his letter was to be treated as lodging an internal appeal. The President referred his case to the Appeals Committee. By letter of 21 October 1992 the chairman of the Appeals Committee acknowledged receipt of his appeal and told the complainant that it would be "dealt with as soon as possible, bearing in mind the Committee's caseload and meetings timetable". No action was taken, however, and by a letter of 3 September 1993 the complainant informed the chairman of the committee that he found the delay unacceptable and if nothing was done with three weeks he would go to the Tribunal. On 6 October 1993 he did so.

The Organization pleaded first that the complaint was irreceivable because he had filed his internal appeal out of time and so had failed to exhaust the internal means of redress as article VII(1) of the Tribunal's statute required. It contended that he knew by August 1991 at the latest that an altered search report had been published in his name and it was up to him then to file an internal appeal. The Tribunal,

however, considered that amendment of the complainant's search report was only one feature of the alleged continuing unfair treatment which formed the subject of his internal appeal. The EPO had also claimed that his complaint was irreceivable under article VII(1) of the Tribunal's statute because in any event he ought to have awaited the outcome of his internal appeal, observing that the Committee took up appeals not just in the chronological order of filling but also with regard to the importance of the issues they raised. It was the Tribunal's contention, however, that the complainant's appeal did raise important issues. It noted that a primary purpose of the Service Regulations was to establish and maintain good staff relations and the investigation of charges of discriminatory and punitive treatment of a staff member was a responsibility that the Organization assumed under those Regulations. The Tribunal further noted that the complainant had filed his first internal appeal on 14 September 1992, and by 3 September 1993 the EPO had not let him have its brief in reply nor even given him any inkling as to when it was likely to do so. It was true that article VII(1) of the Statute provided that a complaint would not be receivable unless the complainant had exhausted such other means, but it was plain from the case law that the Tribunal construed that article to mean that when a complainant had done all that was required of him to get a final decision, yet the proceedings appeared unlikely to be concluded within a reasonable time he may appeal directly to the Tribunal. The Tribunal, therefore declared the complaint receivable.

As to the merits of the case, the complainant had complained that his search reports were changed and that he was not consulted about the changes. The EPO had argued that there was not enough time to consult the complainant, but the Tribunal concluded that even if EPO was short of time it was not justified in changing his reports, in not even discussing the changes with him afterwards nor giving him an opportunity to comment on any amendments, and in publishing them under his name.

The complainant had also complained about having to work under a tutor and that a study was done of his work in order to find fault with his work. The Tribunal considered that if the true purpose the study was to improve the quality of his work his supervisors had a duty to discuss the findings with him, let him comment and suggest measures for improving the quality of his work, and there was no evidence that this was done. What was clear was that none of his search reports had been amended since he protested to amendment of reports he had done in 1991. The Tribunal was satisfied that the action taken by the complainant's supervisors — ordering the study and requiring him to work with a tutor — was actuated by a desire, not to improve the quality of his work, but to punish him for challenging the amendment of his reports without consulting him.

The Tribunal concluded that the Organization had failed to ensure that the complainant's appeal was dealt with in reasonable time and had failed to act in relation to the manner in which his search reports were amended, and in treating him as described above it has further acted in breach of his right to fair treatment. The Tribunal awarded the complainant an award of damages for moral injury in the amount of 6,000 Deutsche marks.

11. Judgement No. 1366 (13 July 1994): Kigaraba (No. 3) v. Universal Postal Union[21]

Recovery of overpayment of education expenses — Question of rate of exchange — Educational expenses are paid only in part — Staff member's position as officer in charge of claims to education expenses — There is no equality in breach of law — Question of misinterpretation of rule — Time limit for recovery of overpayment

The complainant, who had joined the Universal Postal Union (UPU) in 1983 at grade P-2, and in 1986 was promoted to first secretary at grade P-3 in the Personnel Section in charge of claims to the refund of education expenses, appealed against UPU's effort to recover an overpayment in respect of education expenses for two of his children. In its report of 17 July 1992 the committee of enquiry set up to check the education expenses refunded to the complainant determined that he had been overpaid 32,222.40 francs more than his due, but that recovery might be confined to the school years 1986 to 1990 and he would then have to pay back only 27,779.55 francs.

The Tribunal noted that the nub of the dispute was the choice of the rate of exchange to be applied in reckoning the amounts due to the complainant as education expenses for the school years 1986 to 1990. As from 1 January 1984 regulation 3.10.5.C.c of the Staff Regulations was amended: the words "that which was in force at the date when the existing scale of reimbursements came into effect" were replaced with the words "that which was in force at 1 March 1983". The Administration stopped referring to this rate, which was known as the "minimum rate," when regulation 3.10.5.C.c was deleted in 1989. The complainant accepted the method of reckoning used for 1989, the "minimum rate" having then been dropped. His main objection was that after getting the committee of enquiry's report the Union applied, for the purpose of reckoning his entitlements prior to 1989, the United Nations operational exchange rate which had prevailed at the time and which was higher than the one prevailing at 1 March 1983.

The Tribunal, however, considered that it was plain from the material text that the rate prevailing at 1 March 1983 was to apply only if higher than the one that prevailed at the date of repayment. The rate of exchange of the United States dollar stood at 1 March 1983 at only 9.56 Tanzanian shillings whereas the successive rates prevailing at the dates of repayment from 1985 to 1990 ranged from 25 to 193.3 shillings. Short of mistaking the "minimum" for the "maximum" rate the complainant may not properly contend that the rate prevailing at 1 March 1983 should invariably have been used to reckon repayments to be made after 1984.

The complainant had also alleged that it was UPU practice to apply the 1983 "minimum rate" and in support he relied on the fact that senior officers of the Personnel Section checked and approved his expense sheets. The Tribunal noted that UPU had denied such a practice, but in any event the rule, that the whole common system of the United Nations abided by, is to repay education expenses only in part; however, the complainant by misreading regulation 3.10.5.C.c received more than he had had to spend. Moreover, as officer in charge of claims to education expenses he drew up his own expense sheets, and he was not free to seek refuge in the senior officers' approval or to remain silent about a discrepancy to his own advantage.

The complainant had sought to justify his behavior by pleading that other staff members had done the same, but the Tribunal noted that equality in law does not embrace equality in the breach of it. Furthermore, the Director-General had ordered the same treatment for the others as for the complainant.

The complainant also alleged that the amendments to regulation 3.10 could not be retroactive; however, the Tribunal observed that the rule against retroactivity was not at issue here since no new provision or interpretation of the rules on the method of calculation were made retroactive. The complainant must have been aware of the patent disproportion between the advances he was receiving and the education expenses he had actually incurred. He may not properly plead any mistake in interpretation now.

Finally, the complainant argued that there was a time limit for the recovery of overpayments. Though he acknowledged that this was not in UPU's rules, he argued that the Union should follow the practice of the United Nations and the common system, which he stated limited the period for which overpayments might be recovered to the two years or even to the one preceding the discovering of the mistake. The Union observed that any payment made in error might be recovered but did not challenge the rule that an obligation may lapse with time: it claimed recovery only of overpayments since 1986; it had thereby waived some of the sum due and it had not demanded interest. Under the circumstances, the Tribunal concluded that the time limit the Union had set was much to the complainant's advantage and his plea under this head therefore failed.

The Tribunal dismissed the complaint.

12. Judgement No. 1367 (13 July 1994): Ozorio (No. 4) v. World Health Organization[22]

Request for extension of time limit for removal of household effects — Question of receivability — Review of discretionary decision

The complainant, a citizen of the United States, was working at the World Health Organization headquarters in Geneva as an information officer at grade P-4 when he retired on 30 November 1988. On 14 May 1990, he requested a postponement of the time limit allowed for the removal of his household goods on repatriation, which was granted until 30 November 1990. On 12 December 1990 he applied for a further extension to be left open until his wife's retirement from employment at the office of the United Nations High Commissioner for Refugees (UNHCR) in Geneva which could have been 1991 if she took early retirement, or 1996 if she retired at 60. On 9 January 1991 the acting Director of the Division of Personnel agreed "to a final delay of one year until 30 November 1991". On 19 July 1991 the complainant wrote to the Director of Personnel asking him to take a decision in the exercise of his discretion in the light of the fact that in the United Nations system cases like his were not unusual and would become more common. He pointed out that the Organization would incur no additional cost by consenting to extension — since the costs would have been limited in effect as at 30 November 1989 under the relevant rule. The Director replied on 26 August 1991 that it was "incorrect and unacceptable that your spouse's working situation should intervene in the contractual relationship between you and the Organization" and although in one case an extension of time had been granted beyond what the current practice allowed no exception had been permitted since the Director-General had formulated the policy setting a time limit. The Director concluded:

> "… you cannot be granted an extension for the removal of your household effects beyond the third year from the date of termination of your appointment. This is a final decision."

On 26 October 1991, the complainant appealed to the Board of Appeal against "the final decision of the Administration as contained in the letter of 26 August". The Organization contended that the final decision was contained in the letter dated 9 January 1991 and, therefore, the complainant's appeal was irreceivable since the 60 days for appealing against "final action" had expired. The Tribunal noted that staff rule 1230.8.1 state:

"No staff member shall bring an appeal before a Board until all the existing administrative channels have been tried and the action complained of has become final. An action is to be considered as final when it has been taken by a duly authorized official and the staff member has received written notification of the action."

The Tribunal considered that the letter of 9 January 1991 granted a "final delay" to the complainant for the removal of his household effects. Rule 1230.3.1 required that the staff member try "all the existing administrative channels" and no time limit was set for doing so. The complainant's letter of 19 July asked for an exercise of discretion by the Director of Personnel and, if needed, "on the part of the Director-General". So it amounted to a request to try an "administrative channel". The reply of 26 August 1991 to that letter answered the complainant" argument about the retirement of his wife and concluded "this is a final decision". The Tribunal concluded that the letter of 26 August 1991 was the "final action" taken by the Organization, and that therefore the internal appeal complied with the time limit of rule 1230.8.1.

As to the merits of the case, the Tribunal noted that the report of 8 April 1993 of the Board of Appeal held that the Administration had narrowly interpreted the text of the Manual to the complainant's detriment and that the Director-General had not been well advised in the exercise of his discretion. It recommended that the Director-General reconsider the complainant's claim. The Director-General subsequently extended the time limit until 1 May 1995, which was the decision impugned in the present case. The Tribunal, noting that the decision was arbitrary, not only because it failed to state the reasons for choosing the date of 1 May 1995 as the new deadline for the refund of the costs of removal, but because it gave no consistent reply to the complainant's claim. It was a wrong exercise of discretion.

For the foregoing reasons, the Director-General's decision of 1 May 1993 was set aside and the case was sent back for a new decision by the Director-General. The complainant was awarded 4,000 Swiss francs for costs.

13. Judgement No. 1272 (13 July 1994): Malhotra v. World Health Organization[23]

Non-selection to post — Question of confidentiality of selection committee documentation — Right of review by appellate body

The complainant, who was at the ND.6 level working in the Health and Behavior Unit at the WHO Regional Office for South-East Asia in New Delhi, was not chosen for a post as assistant II at grade ND.7 in 1990. He appealed that decision, claiming that the ad hoc selection committee stretched the short list beyond the point of clustering so as to include the selected candidate, and due consideration was not given to the factor rating sheets and to the relative positions of the complainant and the selected candidate. He had 27 years service as a secretary and was ranked first on the shortlist, whereas the selected candidate had only the minimum of 5 years' service as a secretary and had come out only seventh on the shortlist. The complainant appealed first to the regional Board and then to the headquarters Board, but neither Board could adequately address his appeal since the Organization refused to hand over various background papers of the selection committee on the grounds of privilege.

To justify withholding documents sought by the Boards, the Organization relied mainly on a memorandum dated 28 March 1983 which the Director-General addressed to the Chairman of the headquarters Board of Appeal in the context of another case, which in effect stated that selection documentation was confidential in order to allow for frank views. The Tribunal observed, however, that only from examining the documents sought in this case would it have been possible to determine whether the short list had been improperly stretched to favor the successful candidate and due weight had not been given to the comparison of seniority, performance and experience as between him and the successful candidate. When the Organization declined on the grounds of privilege to disclose the information and documents called for it withheld items that formed part of the proceedings leading up to the impugned decision and prevented determination of what the headquarters Board rightly called the one central issue, namely, "the factor rating and listing procedures applied by the [ad hoc selection committee] in reaching their decision".

As the Tribunal held in Judgements No. 1177 (*Der Hovsepian*) and No. 1323 (*Morris No. 2*), an item that forms part of the proceedings that led to the impugned decision may not be withheld from scrutiny by the Tribunal or any appellate body. That rule applied equally to the views expressed by members of the ad hoc selection committee. The Tribunal considered that since there was a right of appeal against the selection based upon the committee's recommendation, both the regional and the headquarters Boards were entitled to review the reasons for the selection and for the recommendation so as to ascertain whether there had been some fatal flaw such as an error of fact or of law, personal prejudice or arbitrariness, and the failure to disclose the views expressed by those who had made the recommendation frustrated the appeal proceedings.

The Tribunal held that the regional Board and then, if need be, the headquarters Board should take up the complainant's appeal anew in the light of full records of the ad hoc selection committee's proceedings. He was awarded US$ 3,000 in damages for the moral injury caused to him and also was awarded $500 in costs.

14. Judgement No. 1376 (13 July 1994): Mussnig v. World Health Organization[24]

Non-renewal of appointment — Question of receivability — Nature of rules on internal appeals and Appeal Board's Rules of Procedure — Organization's role in deterring sexual harassment — Question of a remedy to grave damage to staff member's career

The complainant, who had entered the service of the World Health Organization in January 1987 at grade P-2, was eventually assigned as a technical officer at grade P-3 with the Organization's Global Programme on AIDS in Luanda. The WHO's team in Luanda consisted of its Representative in Angola, the technical officer and an epidemiologist. The Tribunal noted that although Luanda was a difficult duty station the complainant seemed to have worked well with those who were involved in the National Programme. In her performance appraisal report for the period from May 1989 to April 1990 her first-level supervisor, the then Representative, affirmed on 23 March 1990 that she had adjusted "successfully" to expatriation and her second-level supervisor, the Chief of National Programme Support under the GPA wrote on 19 April that her "performances have been satisfactory, particularly when the circumstances under which she had to work and start a new programme are considered".

The Tribunal further noted that relations in the office soured, however, with the arrival in Luanda in June or July 1990 of a new Representative, Dr. Emmanuel Eben-Moussi. The complainant had made serious allegations against Dr. Eben-Moussi of sexual harassment and victimization, and by a memorandum of 22 January 1991 the Chief of Administrative Support Services of GPA started action to terminate the complainant's appointment on the grounds that the Angolan Government officials had informed the Organization of their unwillingness to have the complainant stay on as technical officer.

Upon the complainant's corresponding with WHO's Ombudsman, he filed an appeal on her behalf on 7 March 1991, against the decision not to renew her contract. She lodged a second appeal on 19 September 1992 against the Organization's refusal on the ground of privilege to release to her certain texts in its possession and against its failure to make a performance appraisal report for the period 1990 to 1991. The Board met on 5 February 1993. After taking oral submissions — which it restricted to a duration of five minutes — from the complainant's representative it concluded in a report dated 12 February 1993 that neither of her appeals complied with its Rules of Procedure. It did not specify what provisions of its Rules had not been observed or why such infringement prevented it from hearing her appeals on the merits; but, it did declare the appeals time-barred and recommended rejecting them as irreceivable, the recommendation of which the Director-General accepted.

WHO had pleaded that 8 March 1991 was the starting point, with the formal appeal having been lodged on 19 September 1992, which was eighteen months after the date on which she had been asked to correct the original submission. The Tribunal considered that the complainant's first appeal was lodged on 7 March 1991 and was an appeal against the decision of 28 January 1991 not to renew her appointment. It consisted of a detailed brief which contained all the information that the Board of Appeal needed to enable it to report on the appeal. What she lodged on her 19 September 1992 was her second appeal, which was aimed at obtaining texts the Organization had refused to produce. As for the letter of 19 March 1991 from the Secretary of the Board, it simply told her to supply "the details required"; it did not specify which further details the Board required and the absence of which would prevent it from making recommendations to the Director-General. The Tribunal pointed out that according to case law, for example Judgement No. 607 (*Verron*), though the rules on internal appeals must be respected because proper administration so requires, "they are not supposed to be a trap or a means of catching out a staff member who acts in good faith". As for the Board's Rules of Procedure, their purpose is to promote the expeditious and orderly hearing of appeals, not to deprive appellants of any right of appeal conferred on them by the Staff Rules.

In accordance with rule 1230.8.3 the complainant's first appeal was lodged "within 60 calendar days". Her second appeal, lodged on 19 September 1992, challenged the Organization's decision of 26 June 1992; because of her absence from Geneva, which the Organization did not deny, that decision came to her notice on 1 August 1992; so again she had observed the 60-day time limit. The Tribunal concluded that both appeals were therefore properly before the Board.

The WHO had requested that if its objections to receivability were not upheld the Tribunal send the case back to the headquarters Board of Appeal; however, the Tribunal decided not to do so and ruled on the merits of the case.

The Tribunal noted that the Organization did not contest the complainant's account of the facts on which she founded her case. In particular, it did not seek to refute her allegations against Dr. Eben-Moussi. What did emerge from the evidence was a campaign of victimization of the complainant by the WHO Representative after she had rejected his sexual advances. He had sent headquarters a highly adverse report dated 17 January 1991 about her which both he and the Organization refused to show her. By a letter of 26 June 1992 the Organization's Legal Counsel informed her that he and the Director of Personnel had signed statements refuting the Representative's allegations. The WHO itself admitted that it should have formally stated that it regarded as "without foundation" the Angolan Government's allegations against her of unsatisfactory performance and that that view should have been communicated to all the parties concerned.

The Tribunal further noted that the complainant had difficulty in obtaining employment because of the false impressions that had been given about her performance in Luanda, and that while her career was in ruins the evidence before the Tribunal indicated that the official who was the cause of her troubles had been left unscathed. In the opinion of the Tribunal, any organization that was serious about deterring sexual harassment and consequential abuse authority by a superior officer must be seen to have taken proper action. In particular, victims of such behavior must feel confident that it would take their allegations seriously and not let them be victimized on that account, and here WHO had utterly failed to protect the complainant's rights.

In the opinion of the Tribunal, the damage caused to the complainant's career and reputation was so grave that no form of redress short of reinstatement and the grant of a further contract of employment would suffice. The Tribunal, therefore, ordered that she be put in the same position as if her contract had never been terminated and be reinstated as from the date of termination and up to the date of this judgement. She was granted a contract of employment for a period of two years from the date of this judgement. She was further given an award of damages for the moral injury she had suffered in the amount of 25,000 Swiss francs, as well as costs in the amount of 6,000 francs.

C. Decisions of the World Bank Administrative Tribunal[25]

1. Decision No. 139 (14 October 1994): Jasbir Chhabra v. International Bank for Reconstruction and Development[26]

Complaint against poor performance evaluations — Question of receivability — Allegations of harassment and prejudice must be supported by evidence — Question of a mismatch of staff member's capabilities and requirements of assigned post — Question of a remedy in a case of mismanagement of staff member's career

The Applicant, who had joined the Bank in 1972 as a Research Assistant, was graded at level 21 as a result of the 1985 job grading exercise and was subsequently given the title of Economist. Up to 1987 she had received good performance evaluations. Following the 1987 reorganization she was selected as a grade 21 Economist into the Country Operations Division of the Asia Region, Country Department II (AS2CO), and in 1990 then assigned to the Asia Region, Country Department I, Office of the Director. Her supervisor, on 25 October 1991, when evaluating her performance for the period September 1990 to September 1991, concluded that,

while she "demonstrated considerable ability" in certain fields, she "has not demonstrated the ability to function effectively as a level 21 Country or Sector Economist", but "may be better suited to a research-focused environment".

Subsequently, on 31 January 1992, the Chief of Personnel Officer for Asia offered her three options: (a) a mutually agreed separation; (b) a level 17 Administrative Assistant position entailing a reduction in salary; or (c) an additional six-month trial assignment to perform 21 Economist work, including mission travel, with the understanding that if her performance as level 21 Economist was going to prove fully satisfactory she would be placed in a level 21 Economist position on a permanent basis, but that in the event of unsatisfactory performance she would be subject to the provisions of staff rule 7.01, section 11, "Termination for unsatisfactory performance," with no severance payments. The Applicant accepted option (b).

On 7 April 1992, the Applicant filed an appeal before the Appeals Committee against her supervisor's evaluation, against her merit increases for the years 1988 to 1991 and against the alternatives presented to her in January 1992. On 24 September 1992 she filed a second appeal contesting the Respondent's two decisions relating to the administration of her salary and her merit increases for 1992 and the decision which rejected her contention that the level 17 duties assigned to her were in fact level 18 or above duties. In its report of 24 June 1993, the Appeals Committee recommended, *inter alia*, that the Applicant's level 17 position be elevated to level 18-19 in accordance with the Respondent's assessment of her capabilities and that her salary be adjusted accordingly. The Bank's administration for the most part accepted the Appeals Committee's recommendations in the case. The Applicant appealed to the Tribunal.

The Respondent first raised some issues of admissibility of the appeal. One issue concerned the question whether a request for administrative review, relating to the merit increases, had preceded the appeal to the Appeals Committee. The Tribunal noted that it appeared that neither the Respondent nor the Appeals Committee had raised the issue beforehand and that pursuant to article II, paragraph 2(i), of the statute of the Tribunal, the Respondent might waive the requirement of exhaustion of internal remedies prior to the filing of an application before the Tribunal. In the opinion of the Tribunal, such a waiver must have been deemed to have taken place when the Respondent failed to raise the matter before or at the time that the case was considered by the Appeals Committee. Another issue raised by the Respondent concerned the Applicant's request that the Respondent compensate her for damages to her health. The Respondent argued that because a similar claim had been filed by her and was currently pending before the Bank's Worker's Compensation Claims Administrator the matter was not admissible before the Tribunal. While the Tribunal concurred with the Respondent on this point, it further stated that the Applicant's claims relating to an alleged failure by the Respondent to take account of her health problems and the incidence, if any, of this alleged failure on her career were part of the present case.

As to the merits of the case, the Applicant maintained that after her assignment to AS2CO in 1987 she, *inter alia*, was subjected to harassment, prejudice and unfair treatment by her supervisors, in particular on gender and ethnic grounds; and that this hostile environment and the resulting stress had caused her serious health problems. Regarding the allegations of harassment and prejudice, the Tribunal noted that, even though the working relationship between the Applicant and her supervisors in AS2CO from 1987 onwards appeared not to have been good, the Applicant had failed to produce evidence to support such allegations.

The Tribunal noted that the Applicant had been given assignments with different economists, each of whom had evaluated her independently, and that the Appeals Committee's report had observed: "There was a problem of poor performance as documented by (her) numerous supervisor's." The Tribunal further noted that this appeared as early as in her 1989 performance evaluation report in which her supervisor had written that, although she was able to "produce a superior product" when "given time to reflect", "the particular requirements of (the) Division are not areas in which she can effectively apply her more specialized skills". He concluded that "there is … a clear mismatch between her strengths and the Division's requirements". Upon transfer to another division in 1990, her new supervisor in evaluating her performance for the period September 1990 to September 1991 reached a similar conclusion. The same supervisor in evaluating her performance covering the period July 1991 to March 1992 concluded that, while the Applicant had performed satisfactorily the 18 to 20 level tasks entrusted to her, "her work did not indicate that she could meet the standards of performance expected of a grade 21 Country or Sector Economist".

As the Tribunal pointed out, it was in the light of these concurring assessments of the Applicant's performance and her inability to meet the requirements of a level 21 Economist and with a view to bridging the "mismatch" which had appeared between her capabilities and the requirements of her job that the Respondent had taken various steps aimed at solving the problem. As mentioned above, the Applicant was assigned in 1990 to another division for a trial period. Because of her health problems, she was granted a part-time arrangement, with working hours specially adapted to her medical condition. In 1991 the Respondent undertook a search for an alternative position better suited to the Applicant's capabilities. This search was unsuccessful and in January 1992 the Respondent proposed to the Applicant the three options detailed above.

The Tribunal, while recalling that the Respondent based upon the recommendation of the Appeals Committee had agreed to restore the Applicant to level 18 and to adjust her salary accordingly, considered that the Respondent's treatment of the Applicant had been flawed from the outset by the "mismatch" which had appeared between the Applicant's capabilities and the level 21 Economist position assigned to her following the 1987 reorganization. At that time, the Respondent had clearly overestimated the Applicant's skills.

The subsequent efforts by the Respondent to remedy this "mismatch", in the opinion of the Tribunal, had ended up in offering the Applicant a choice which was such only in name. It was unfair because of her illness which, as her supervisor acknowledged, made it impracticable for her to be given a fair trial at level 21, and the other two options, of either leaving the Bank or accepting a demotion to an unreasonably low level, was no real choice at all.

The Tribunal concluded that although there was no particular decision of the Respondent to be quashed, the Respondent's behavior towards the Applicant from the reorganization onwards, taken as a whole, constituted mismanagement of the Applicant's career, which fell short of the standards of treatment required by the bank under the Principles of Staff Employment. Taking into account the Respondent's efforts to remedy the difficulties created partly by its own decisions, the Tribunal decided that the Respondent should pay the Applicant compensation in the amount of US$ 50,000 and costs of $5,000.

2. Decision No. 140 (14 October 1994): Safari O'Humay v. International Bank for Reconstruction and Development[27]

Complaint against disciplinary proceedings concerning the hiring of a domestic employee on a G-5 visa — Question of whether a personal debt of the staff member pertains to the domain of official duties and conduct — Misrepresentations to foreign consular office regarding an agreement between staff member and G-5 domestic employee — Question of the consideration of staff member's performance report in the context of disciplinary proceedings — Question of appropriateness of disciplinary measures imposed

The Applicant, a staff member of the World Bank on a G-4 visa since 1978 and working as a Financial Analyst, level 23, hired a domestic employee on a G-5 visa, "P", who according to the Applicant worked in his household from 29 June 1987 through 31 July 1989. He had filed the appropriate applications with the Visa Administrator of the Respondent and identified P as the prospective domestic employee. By letter dated 18 December 1986 to the United States Consul in Dar es Salaam, the Visa Administrator indicated that P, a Tanzanian national, would be applying for a G-5 visa to work in the household of the Applicant. In a document entitled "Final Employment Agreement (Amended)" between the Applicant and P, dated 15 March 1987, and amended on 25 March and 11 May 1987, it was stated that the parties had agreed, *inter alia*, that the duties of P were to nurse a newborn baby, oversee a 12-year-old, do laundry, cooking and general house cleaning for the weekly salary of US$ 150, or the minimum wage required, and that the employer would deduct $25 per week for lodging and meals. However, the Applicant and P had made an oral agreement that he would pay her only $50 per week with no deductions and pay all her living expenses, and it was on the basis of that agreement that the United States Embassy at Dar es Salaam had previously denied P's visa. In other words, the Applicant's written agreement was made only to comply with the requirements imposed by the United States Consul.

On 1 December 1989, P requested the assistance of the Ethics Officer in recovery from the applicant of $3,000 she had allegedly lent the Applicant and salary which had not been paid to her. After an investigation of her complaints and consultations with the Legal Department the Ethics Officer wrote a memorandum, dated 6 March 1991, to the Director of Personnel, Operations (POP), setting out the details of the matter and recommending disciplinary measures. By memorandum dated 18 September 1991 the Director of POP informed the Applicant that he had concluded that the Applicant had made misrepresentations to the United States Consul regarding the minimum wage stated in the domestic's contract; that the misrepresentations had the effect of calling the reputation and the integrity of the Bank into question; the Applicant had an outstanding debt to P in the amount of $3,000 plus back compensation owed to P; and, in failing to compensate P in accordance with local law and to meet the obligations incumbent on employees who were on a G-4 visa, the applicant had not met his personal and legal obligations as a Bank staff member.

The Director subsequently imposed the following disciplinary measures: (1) no further requests would be made by the Bank on the Applicant's behalf to obtain a domestic on a G-5 visa; (2) a written reprimand and a written warning for the future would be placed in his Personnel File; (3) failure to promptly pay his debt to P and to correct her W-2 form would lead to further disciplinary action, and possibly termination; and (4) there would be loss of any salary increase resulting from the 1992 Salary Review Exercise.

On 28 February 1992, the Applicant filed an appeal with the Appeals Committee, which in its report, dated 25 January 1993, concluded that the employment agreement presented to the United States Consul was a misrepresentation and that the Respondent had properly imposed disciplinary measures on the Applicant. The Applicant subsequently appealed to the Tribunal.

The Tribunal first made a determination of whether the nonpayment of a personal debt of the Applicant to his employee could lawfully furnish cause for disciplinary or other action by the Respondent. The Tribunal considered that there was a need to distinguish clearly between matters of a private nature and matters which pertained to the domain of official duties and conduct. In this regard, the Tribunal noted that principle of staff employment 3.3 distinguished between official conduct and private obligations. While the former was subject to immunity from civil jurisdiction, private obligations were not. Furthermore, consistent with the principle, paragraph 3.01 of staff rule 8.01 established a standard for separating private from official conduct. Private conduct came under that paragraph only if it reflected adversely upon the reputation of the Bank, which then would fall under the disciplinary jurisdiction of the Respondent, and whether a specific situation involving a personal debt may be brought under staff rule 8.01 would of course require a determination by the Respondent on a case-by-case basis. It was the opinion of the Tribunal that in the present case that the record did not provide any evidence that this debt in any way reflected adversely upon the reputation and integrity of the Bank.

Regarding the issue of the contract between the Applicant and P, the Tribunal noted that a misrepresentation had been made by the Applicant to the United States Consul. The contract of employment between the Applicant and P was amended so as to state a weekly wage which he had no intention of paying because in his view there was a prior oral argument which governed his relationship with P. This contract had been made in compliance with the requirements laid down by both the Respondent and the United States Consular Officer in Dar es Salaam in connection with the use of the privilege of obtaining a G-5 visa. In fact, a staff member wishing to make use of that privilege must obtain the appropriate forms and explanations from the Bank's Visa Office, including a sample employment contract and information on minimum wage requirements. The contract of employment negotiated on that basis was then submitted to the said Visa Office which requested the United States Consular Officer to issue a visa. That officer reviewed the contract before deciding whether to issue a visa. That review was related not only to the formal aspects of the contract but also to its substance, particularly to the observance of minimum wage regulations. All the required steps were taken in the present case. A question was raised by the Consular Officer, however, as to the appropriateness of the amount of the wages to be paid under the contract of employment. It was in that context that the question of a misrepresentation arose.

In the opinion of the Tribunal, the Applicant's conduct in regard to the granting of a G-5 visa had an impact on the Bank's interests. As also stated by principle of staff employment 3.3, privileges and immunities of staff members were established "in the interests of their Organizations". It followed that staff members must avoid any kind of abuse of their privileges. Employment with the Bank was the sole and specific legal source of the Applicant's entitlement to any of the two types of visas involved in the case, and therefore the Respondent was correct in not regarding the hiring of a domestic employee on a G-5 visa as a purely private matter.

The Tribunal further noted that the misrepresentation had been followed by the failure of the Applicant to observe the minimum wage requirements, which had

been brought to his attention in good time by both the Bank and the United States Consul. However, the Tribunal pointed out that the Bank could not become involved in the adjudication of disputes concerning unpaid salaries above and beyond the question of minimum wage requirements since that would be to substitute itself for ordinary courts of law.

The Applicant had argued that the consideration of his Performance and Planning Review Report (PRR) in the course of taking disciplinary measures was irrelevant and an invasion of privacy. The Tribunal rejected this argument, considering that it was reasonable that in a case of this complexity all relevant factors be taken into consideration and the Applicant's performance was relevant because it provided an indication of the working relationship between the staff member and the Bank. Paragraph 4.01 of staff rule 8.01 mandated that in imposing disciplinary measures the Respondent must take into account, among other aspects, "the situation of the staff member". To this end, the officers in charge of the investigation had a right to see a staff member's PRR. Nor did the Tribunal accept the argument that the Applicant's right of privacy had been compromised by the fact that his PRR was considered when disciplinary measures were taken. Performance reviews were intended to serve institutional objectives and, particularly, the improvement of performance so as to achieve the goals of the organization. In that regard, while the PRR might be protected by confidentiality, it cannot be considered a document protected by the right of privacy in the context of the Respondent's disciplinary decisions.

Regarding the disciplinary measures imposed for the Applicant's misrepresentations in connection with the visa application, his failure to pay a salary in keeping with the applicable minimum wage laws, as well as his failure accurately to file reports relating to social security taxes, the Tribunal concluded that in the circumstances of the case a warning could be regarded as a kind of censure, a measure which was indeed expressly referred to in paragraph 4.02(a). In any event, a warning certainly fell within the inherent powers of any administration as a means of dealing with the disciplinary matters. The loss of salary increase for 1992 in the circumstances of the present case was a reduction in pay within the meaning of paragraph 4.02(g), as then written. The Tribunal, therefore, had not found any incompatibility between the disciplinary measures imposed and staff rule 8.01.

The Tribunal also considered the issue of the proportionality of the disciplinary measures imposed and the Applicant's contention that they were excessively severe. The Tribunal, citing Decision No. 14, *Gregorio* (1983), as authority for its consideration of the issue, concluded that given the nature of the misrepresentation made to the United states Consul and subsequent events constituting the misconduct, and particularly the fact that there appeared to have been no malice on the part of the Applicant, the loss of salary increase was proportionate to the misconduct only insofar as its effects were strictly confined to 1992, but not to the extent that that measure would have any cumulative effect over subsequent years. This conclusion was further justified by the fact that the Applicant had settled all differences with P, paid her in full and corrected the tax reports. The other measures imposed by the Respondent could not be regarded as disproportionate. The removal of the G-5 visa privileges, a written warning about the Applicant's handling of other privileges and benefits and a written reprimand as a response to both the misrepresentation to the United States Consul and the dealings with P were proportionate measures given the various options available to the Respondent under staff rule 8.01. The same held true of the order promptly to correct the social security reportings.

The Tribunal, in addition to ordering that the deprivation of the Applicant's 1992 salary increase not have consequences going beyond that year, decided that all references and documents relating to the question of the disputed personal debt and to unpaid salaries above the applicable minimum wage requirements should be removed from the Applicant's personnel and staff records. The Tribunal awarded the Applicant US$ 1,300 in costs.

D. Judgement of the Administrative Tribunal of the International Monetary Fund[28]

1. Judgement No. 1994-1 (31 August 1994): Mr. "X" v. International Monetary Fund[29]

Request that the length of service period for Pension Fund calculation be extended from 30 September 1985 to 1 January 1986 — Jurisdiction of Tribunal — Administrative decision having later consequences

The Applicant on April 1985 had been allowed to resign from the International Monetary Fund in lieu of termination. Subsequently, the Applicant was allowed to withdraw his resignation in order to file a grievance with the Grievance Committee of IMF, which was not successful, and he was advised based on his serious misconduct he would be terminated, effective 30 September 1985. The Applicant appealed his termination on 16 September 1985 and was placed on annual leave beginning 1 October 1985, pending the Committee's recommendations and final decision by the Managing Director of IMF. It was further agreed that when his annual leave expired he would continue on leave without pay.

On 14 February 1986, the Grievance Committee issued a report and recommendation to the Managing Director in which it found that the Applicant's termination had been for just cause. It also recommended that the Applicant be given another and final opportunity to resubmit his earlier resignation, effective 30 September 1985, in lieu of termination. The Managing Director accepted the recommendation of the Committee, and the Applicant resigned from IMF as of 30 September 1985.

By letter of 20 March 1986, the International Monetary Fund confirmed his earlier resignation, effective 30 September 1985, and offered him an *ex gratia* payment of US$ 10,000 under the IMF Termination Benefit Fund. An attachment to that letter indicated that Mr. "X's" contributions to the Staff Retirement Plan after the effective date of his resignation had been credited to him. The Applicant wrote back expressing his appreciation of the terms. The Applicant was further informed, on 21 April 1986, that taking the date of his termination, he had 15 years and 3 months of eligible service under the Staff Retirement Plan. In a letter of 8 May 1986 addressed to the Managing Director, the Applicant requested that his resignation take effect on 8 January 1986 to coincide with the expiration of his accrued leave, rather than 30 September 1985, which was rejected.

The Applicant wrote to IMF in 1988, 1990, 1991 and 1992 regarding the amount of the pension to which he would in due course become entitled. All of IMF's replies to Mr. "X" treated his pensionable period of service as terminating on 30 September 1985. In anticipation of his 55th birthday on 19 November 1993, the Applicant requested information on the amounts of the pension under the options and requested a review on the ground that his entitlements had been computed on the basis of his

service ending on 30 September 1985, despite his contribution to the Staff Retirement Plan having been made in the subsequent period of his accrued leave. In a letter from IMF dated 12 May 1993, he was reminded that the pension contributions the Applicant made after 30 September 1985 had been credited to him.

The Applicant appealed, complaining that the amount of the pension was less than it should have been because the pension had been calculated on a length of service ending 30 September 1985 instead of January 1986, when his accrued leave expired. The Tribunal noted that the contributions to the pension fund made by him between those two dates were in effect reimbursed to him in the context of a financial settlement with IMF in March 1986. However, the Applicant maintained that that treatment of his contributions was unlawful pursuant to article 6, section 2(c), of the Staff Retirement Plan which, he asserted, provided that contributions were irrevocable.

The Applicant also contended that the administrative act which he challenged was the calculation of his pension in 1993 and the issuance of pension payments beginning in December 1993 which reflected a period of pensionable service which was deemed to have ended 30 September 1985 rather than in 1986 when his accrued leave had expired. He maintained that, if a decision was taken in 1986, it affected him "now"; in the alternative, he maintained that IMF did no more in 1986 and subsequently than to "threaten" to take a decision which it could always have reconsidered and corrected up to the time when it finally calculated the amount of his pension in 1993 and issued pension payments pursuant to that calculation.

The Respondent had maintained that the act complained of, the reversal in 1986 of certain pension contributions, pre-dated the commencement of the Tribunal's jurisdiction and, under generally accepted principles of international administrative law, that the application should be dismissed as untimely. The fact that the act decided upon and taken in 1986 had financial effects within the period of the Tribunal's competence did not confer jurisdiction on the Tribunal.

The Tribunal pointed out that article XX of the statute of the Tribunal provide that "the Tribunal shall not be competent to pass judgement upon any application challenging the legality or asserting the illegality of an administrative act taken before 15 October 1992…"

It was clear to the Tribunal that the administrative act at issue was the decision of IMF to treat Mr. X's period of pensionable service as terminating as of the effective date of his resignation, namely, 30 September 1985, and, consequently, to reverses pension contributions made thereafter. The Tribunal further recalled that Mr. X had been aware of this decision to take 30 September 1985 as the date as of which the period of his pensionable service terminated. Indeed, by a written communication of 8 May 1986 he had contested the decision, and moreover he had contended that the withdrawal of contributions from the Plan by IMF was "illegal". In the view of the Tribunal, there could hardly have been a plainer assertion of the illegality of an administrative act, and that assertion had been voiced in 1986, more than five years before the date for the commencement of the Tribunal's jurisdiction, 15 October 1992.

The Tribunal also did not agree with the Applicant's assertion that the administrative act complained of did not take place in 1986, but later in 1993 when his pension entitlement was finally calculated and he began to receive his pension payments. In the opinion of the Tribunal, the calculation of Mr. X's pension in 1993 was a purely arithmetical act governed by the decision of 1986 as to the extent of his

pensionable service. As was repeatedly made clear to the applicant in response to his inquiries about his pension options, the variable that remained to be factored in was the effect of cost-of-living increases. The fact that the decision of 1986 had produced consequences for the Applicant subsequently could have no effect upon the extent of the jurisdiction of the Tribunal; if it were otherwise, then the limitation on the commencement date of the Tribunal's jurisdiction would be meaningless since the effects of innumerable pre-October 1992 acts might well be felt for years after the date when the Tribunal's statute came into force.

The Tribunal dismissed the application.

NOTES

[1] In view of the large number of judgements which were rendered in 1994 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 volume of the *Yearbook*. For the integral text of the complete series of judgements rendered by the four Tribunals, namely Judgements Nos. 634 to 687 of the United Nations Administrative Tribunal, Judgement Nos. 1301 to 1376 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 136 to 140 of the World Bank Administrative Tribunal and Judgement No. 1994-1 of the Administrative Tribunal of the International Monetary Fund, see, respectively: documents AT/DEC/634 to 687; *Judgements of the Administrative Tribunal of the International Labour Organization*: 76th and 77th Ordinary Sessions; *World Bank Administrative Tribunal Reports*, 1994, and Judgement No. 1994-1 of the Administrative Tribunal of the International Monetary Fund.

[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: International Civil Aviation Organization and International Maritime Organization. In addition, the Tribunal is competent to hear applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund.

[3] Jerome Ackerman, Vice-President, presiding; Francis Spain and Mayer Gabay, Members.

[4] Luis de Posadas Montero, Vice-President, presiding (Statement); Mikuin Leliel Balanda and Mayer Gabay, Members.

[5] Samar Sen, President (Dissenting Opinion); Francis Spain and Mayer Gabay, Members.

[6] Samar Sen, President; Jerome Ackerman, Vice-President; and Francis Spain, Member

[7] Samar Sen, President; Francis Spain and Mayer Gabay, Members.

[8] Jerome Ackerman, Vice-President, presiding; Hubert Thierry and Francis Spain, Members.

[9] Samar Sen, President; Mikuin Leliel Balanda and Mayer Gabay, Members.

[10] The Administrative Tribunal of the International Labour Organization is competent to hear complaints alleging nonobservance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Labour Organization (including the International Training Centre) and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1994, the World Health Organization, including the Pan American Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union, the World Meteorological Organization, the Food and Agriculture Organization of the United Nations, the European Organization for Nuclear Research, the General Agreement on Tariffs and Trade, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the universal Postal Union, the European Patent Organization, the European Southern Observatory, the Intergovernmental Council of Copper-Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization, the African Training and Research Centre in Administration for Development, the Intergovernmental Organization for Internal Carriage by Rail, 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, the International Union for the Protection of New Varieties of Plants, and the Customs Cooperation Council. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the former Staff Pension Fund of the International Labour Organization.

The Tribunal is open to any official of the above-mentioned organizations, even if his employment has ceased, to any person on whom the official's rights have devolved on his death and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the staff regulations upon which the official could rely.

[11] Jose Maria Ruda, President; Edilbert Razafindralambo and Michel Gentot, Judges.

[12] Jose Maria Ruda, President; Pierre Pescatore and Mark Fernando, Judges.

[13] Jose Maria Ruda, President; Pierre Pescatore and Michel Gentot, Judges.

[14] Sir William Douglas, Vice-President; Pierre Pescatore and Mark Fernando, Judges.

[15] Jose Maria Ruda, President; Edilbert Razafindralambo and Michel Gentot, Judges.

[16] Jose Maria Ruda, President; Sir William Douglas, Vice-President; and Mark Fernando, Judge.

[17] Jose Maria Ruda, President; Sir William Douglas, Vice-President; and Edilbert Razafindralambo, Judge.

[18] Jose Maria Ruda, President; Edilbert Razafindralambo and Michel Gentot, Judges.

[19] Sir William Douglas, Vice-President, Mella Carroll and Mark Fernando, Judges.

[20] Ibid.

[21] Jose Maria Ruda, President; Edilbert Razafindralambo and Pierre Pescatore, Judges.

[22] Jose Maria Ruda, President; Edilbert Razafindralambo and Michel Gentot, Judges.

[23] Sir William Douglas, Vice-President; Mella Carroll and Mark Fernando, Judges.

[24] Ibid.

[25] 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 Recon-

struction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as "the Bank Group").

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[26] A. Kamal Abul-Magd, President; Elihu Lauterpacht and Robert A. Gorman, Vice-Presidents; and Fred K. Apaloo, Francisco Orrego Vicuña, Tun Mohamed Suffian and Prosper Weil, Judges.

[27] Ibid.

[28] The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is empowered to review any employment-related decision taken by the Fund on or after 15 October 1992.

[29] Stephen Schwebel, President; and Michel Gentot and Agustin Gordillo, Associate 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)

CLAIMS, COMPENSATION, CONTRACTS AND LIABILITY ISSUES

1. CLAIM FOR RENTAL PAYMENT FOR THE USE OF A COMPOUND BY UNITED NATIONS MISSION IN SOMALIA (UNOSOM II) — GENERAL PRINCIPLES CONCERNING PROVISION OF PREMISES IN PEACEKEEPING OPERATIONS — THE CASE OF UNOSOM II

Memorandum to the Under-Secretary-General for Peacekeeping Operations

1. This is with reference to your memorandum of 15 September 1993 forwarding for our advice copies of correspondence between the owner of a compound (Mr. A) and various United Nations officials concerning the occupancy by UNOSOM of his property and known as KM7 compound in Mogadishu.

(*a*) The facts

2. We understand that the compound consists of a plot of land of 10 thousand square meters containing both high-rise and singly built houses, a recreation club and a swimming pool. From June 1964 to May 1992 the compound was leased to the United States State Department. According to Mr. A, in December 1992 he was "evicted" from the compound, which was first occupied by United States Marine Forces participating in the Unified Task Force (UNITAF) and subsequently by troops participating in UNOSOM.

3. Mr. A claims compensation in the amount corresponding to the rental value of the compound since December 1992 on the basis of the rent paid by the United States State Department "before the war": US$ 15,000 per month.

4. In his letter of 21 July 1993 addressed to Mr. A, the Legal Advisor of UNOSOM II rejected the claim on the basis that UNOSOM was not responsible for the original seizure of the compound by UNITAF, that UNOSOM's subsequent possession of the compound was legitimized by military reasons since the position of the building presented a security risk for the Force and that the compound "has no value, it is not rentable".

(*b*) Comments

(i) *Mandate and operational arrangements of UNOSOM*

5. UNOSOM (I) was established by Security Council in its resolution 751 (1992) of 24 April 1992 in support of the Secretary-General's continuing mission in Somalia to, *inter alia*, facilitate the cessation of hostilities and the maintenance of a cease fire throughout the country and to provide urgent humanitarian assistance.

6. By its resolution 794 (1992) of 2 December 1992, the Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the Secretary-General as well as the Member States, which had offered to establish an operation (subsequently called UNITAF) to create a secure environment for humanitarian relief operations in Somalia, to use all necessary means to that effect. Those Member States were further authorized by the Council "to use all necessary means" in order to fulfill the mandate of the operation (see para. 7-10 of the resolution).

7. Unlike UNOSOM (I),[1] UNITAF was not established "under the authority" of the Security Council. UNITAF's operations were conducted by the participating Member States, in "coordination" with the United Nations.[2]

8 The expanded mandate of UNOSOM (II), following the completion of UNITAF, was approved by Security Council resolution 814 (1993) of 26 March 1993 in order to create a secure environment for humanitarian relief operations in Somalia. By endorsing the recommendations contained in paragraphs 56 to 88 of the report of the Secretary-General of 3 March 1993 (S/25354), the Security Council, acting under Chapter VII, entrusted UNOSOM, *inter alia*, with the following military tasks established in paragraph 57 of that report:

> "… (*b*) To prevent any resumption of violence and, if necessary, take appropriate action against any faction that violates or threatens to violate the cessation of hostilities;
>
> "… (*f*) To protect, as required, the personnel, installations and equipment of United Nations and its agencies, the International Committee of the Red Cross as well as NGOs and to take such forceful action as may be required to neutralize armed elements that attack, or threaten to attack, such facilities and personnel, pending the establishment of a new Somali police force which can assume this responsibility."

9. The Secretary-General was also requested, in paragraph 14 of Security Council resolution 814 (1993), to direct the Force Commander of UNOSOM II, through his Special Representative, to "assume responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia."

10. Thus, UNOSOM II has a comprehensive and far-reaching mandate allowing it to take whatever action is necessary for attaining the operation's objectives.

(ii) *General principals concerning provision of premises in peacekeeping operations and the special case of UNOSOM II*

11. The provisions of past status of forces agreements and the practice allowed in past and present peacekeeping operations have established the principle that it is the host Government's responsibility to provide a peacekeeping force, at no cost to the United Nations, with all the facilities to fulfill the functions of the force. This principle is reflected in the first sentence of paragraph 16 of the model status of forces agreements.[3]

12. The corollary of the Government's obligation to provide such facilities is its responsibility for dealing with, and settling any claims made by landowners in respect of the temporary appropriation of land or premises by reason of military necessity, or in respect of property damage resulting from operational activities of troops participating in a United Nations peacekeeping operation.

13. In the absence of a status of forces agreement and of the host Government that could undertake the responsibility of providing UNOSOM II with the necessary facilities, the Organization itself had to assume this responsibility and to make appropriations in the UNOSOM II budget for rental and alteration/renovation of premises needed for operational purposes.

(iii) *Analysis of Mr. A's claims*

14. According to Mr. A, the compound was originally occupied by United States Marine Forces participating in UNITAF in December 1992. As indicated in paragraph 7 above, the operations of UNITAF were not conducted under United Nations command and thus UNOSOM is not responsible therefor. Any claim which Mr. A might have with regard to UNITAF occupation of the compound should be addressed to the appropriate United States authorities. Therefore, we need not analyze the legitimacy of, or the need for, occupation of the compound by UNITAF. As far as the United Nations is concerned, Mr. A's claim has to be considered exclusively within the framework of the mandate of UNOSOM II and with regard to the period of occupancy of the compound by UNOSOM II troops.

15. We understand from the UNOSOM II Legal Advisor's letter of 21 July 1993 to Mr. A that the location of the compound "constitutes a serious security risk", since it "prominently overlooks the Forces Headquarters" and UNOSOM II had to move its forces into the compound to "protect and secure the [UNOSOM] headquarters".

16. Subject to the authority of the Secretary-General, the responsibility for decisions on strategic aspects of an operation rests with the Force Commander. If it is established under the latter's authority that occupation of the compound by hostile factions would have exposed UNOSOM II to serious threat so that effective protection to "the personnel, installations and equipments of United Nations and its agencies, ICRC as well as NGOs" (see para. 8(f) above) could not have been assured without UNOSOM II taking physical possession of the compound, the occupation thereof may be considered as an act of military necessity to ensure the achievement of the objectives laid down in Security Council resolution 814 (1993).

17. From this perspective, the occupation of the compound may be considered legal. It should be noted in this regard that, judging from numerous letters of the claimant, he himself does not question the legality of the occupation and limits his claims to receiving compensation.

(iv) *Question of compensation*

18. It should therefore be considered whether Mr. A is entitled to any compensation for loss of use of, or damage to, the compound and, in the affirmative case, whether the Organization should undertake to pay such compensation.

19. As mentioned above, in traditional peacekeeping operations the host Government assumes responsibility for dealing with the settling of claims of property owners for compensation regarding property occupied for reasons of, or damage by, military necessity. The present case is unique as no status of force agreement was entered into between the Organization and Somalia there is no national administrative authority that might undertake the responsibilities usually assumed by host Governments. In the light of these circumstances, general principles of international law might be referred to provide guidance in dealing with the claim in question.

20. The rights to compensation of owners of private property temporarily appropriated for reasons of military necessity or damage in the course of armed conflict are generally recognized under international law.

21. The Hague Convention Respecting the Laws and Customs of War on Land of 18 October 1907 ("The Hague Convention IV")[4] embodies the principle that private property should be respected in times of armed conflict. Article LII of section III (Military Authority over Hostile Territory) of the Convention's Annex, entitled "Regulations Respecting the Laws and Customs of War on Land", requires that contributions in kind made upon requisition "shall, as far as possible, be paid for in ready money".

22. Although peacekeeping operations differ from armed conflicts to which the Hague Convention IV applies, the past practice of peacekeeping operations indicates that the Organization has endeavored to ensure that the owners of private property receive adequate compensation for the use of their property because of operational necessity. In the case of the United Nations Emergency Force (UNEF), the Organization even undertook to pay such compensation directly without prejudice to its rights to obtain eventual reimbursement, as explained in paragraph 142 of the report of the Secretary-General, entitled "Summary study of the experience derived from the establishment and operation of the Force":[5]

> "UNEF agreed that it should pay for damages to real property arising out of negligence or other causes not related to the necessary functions of the Force, and that it should pay reasonable rentals for property utilized by UNEF for the comfort and convenience of the Force. The question of privately owned land used because of operational necessity, and the for that reason to be provided under the Agreement, has been the subject of discussions between —— Authorities and the Secretary-General, resulting in a procedure whereby UNEF surveys the sites together with representatives of local authorities and, on the basis and on the assumption that it is established that the —— Government would have honored the claim, makes payment to the owners, reserving its rights under the Agreement and the possibility, in due course, of raising with the Government such demands for reimbursement as those rights warrant."

23. In our view, there seem to be even stronger reasons for the United Nations to assume the responsibility for settling the claims by owners of property used because of operation necessity in the absence of a status of forces agreement or an effective Government in the country in which the operation is deployed.

24. However, as the decision to be taken with regard to the present case might have important practical ramifications for the Organization both in respect of UNOSOM II and any similar operation, and since there appears to be no specific budgetary appropriation for claims settlement by UNOSOM II,[6] it would appear advisable that the general issue of compensation in cases such as the present be brought to the attention of the Security Council, in forthcoming reports of the Secretary-General on the situation in Somalia, and the attention of the Advisory Committee on Administrative and Budgetary Questions, in future reports on the financing of the United Nations Operation in Somalia. In that respect, the Secretary-General might wish to propose to the Advisory Committee that the Organization would pay compensation for private property used because of operational necessity, or damaged in the course of military actions.

26 January 1994

2. Contractual arrangements established for the purchase of the goods and service requested by a government — UNICEF Financial Regulations and Rules — Requirement that payments be made in advance of purchase and delivery of the goods and services obtained through UNICEF by Governments

Draft letter to a government representative

In your facsimile message of 7 February 1994, you wished to know the authority of the Executive Board and how its members are related to the top level of the United Nations, in order to have a clear understanding of the international relevance of the Executive Board's resolutions. You also requested a copy of the UNICEF Financial Regulations and Rules.

In order to provide you with an appropriate response to the first question, the advice was sought of the United Nations Office of Legal Affairs in New York, and I have now been requested to provide you with the following information:

The UNICEF Financial Regulations were promulgated by the UNICEF Executive Board, by its decision 1986/181 of 23 July 1986, and the General Assembly, by its decision 41/461 of 11 December 1986. The Economic and Social Council is the principal organ of the United Nations charged under the Charter of the United Nations, with making recommendations to the General Assembly with respect to international, economic, social, cultural, educational, health and related matters. The General Assembly having authorized the promulgation of the Regulations by the UNICEF Executive Board, these Regulations enjoy for UNICEF the highest possible legal force in exercise of its mandate.

The Executive Board of UNICEF was established under General Assembly resolution 57 (I) of 11 December 1946 as the Governing Body of UNICEF and is composed of representatives of Governments designated by the Economic and Social Council. The Board has most recently been reconstituted by the General Assembly as part of the restructuring and revitalization of the United Nations in the economic, social and related fields, by its resolution 48/162 of 20 December 1993. This resolution explains in annex I the institutional framework for the operation of the Executive Boards of the various funds and programmes of the United Nations, including UNICEF. The composition and functions of these Executive Boards are provided in part III, section 3, annex I to the resolution.

The requirement that payments be made in advance of purchase and delivery of the goods and services obtained through UNICEF by Governments is based on the principle that these purchasing activities are undertaken by UNICEF as special arrangements for the benefit and at the expense of these Governments. The core resources of UNICEF, obtained through voluntary contributions, are budgeted by the Executive Board to finance UNICEF programmes of cooperation with the Governments and are not to be used for such activities.

The purchasing activities have been authorized by the UNICEF Executive Board under UNICEF financial regulation 5.2, to provide additional assistance to Governments to purchase supplies, equipment and services funded by the Governments themselves to supplement the UNICEF funded programmes. The regulation provides that such activities be provided on the basis of an Agreement which ensures that they be fully funded by the requesting Government, covering all actual and incidental expenses connected with the goods and services supplied. It is in this

connection that UNICEF insists that funds for carrying out such activities be paid for by the requesting Government before the procurement activities are commence. The payment in full of the costs estimated for provision of the goods and services through UNICEF constitutes, in fact, a pre-payment condition not to be mistaken for advance payments under ordinary contracts.

As regards the international relevance of the UNICEF regulations, we believe that the answer to this is that in the case of UNICEF, these regulations are binding on it. Since these regulations are internal to the United Nations, they cannot be said to be equally binding on an interested State, but it is expected that as a State Member of the United Nations it would respect the necessity for UNICEF to comply with such regulations.

A copy of the UNICEF Financial Regulations and Rules is attached, as requested.

28 February 1994

3. Contracts awarded to licensed operators acting as brokers in aircraft chartering — Standard United Nations aircraft charter agreement — Short-term charters

Memorandum to the Acting Chief, Field Missions Procurement Section, Purchase and Transportation Service, Office of General Service

1. This is in response to your memorandum of 2 May 1994, in which you sought "clarification on the policy of awarding contracts to licensed operations acting as brokers, who have subcontracted to licensed operators who are willing to sign the contract".

2. The policy concerning the use of brokers was established by the Secretary-General in his note verbale of 5 November 1993 to the Permanent Representative of a State concerned. In that note verbale, the Secretary-General wrote:

> "Additionally, United Nations aircraft charter bid invitation and contract documents have been substantially modified to include *only licensed operators possessing valid air operator certificates, authorizing them to operate the types of aircraft in the areas required, as being eligible to render air charter services to the United Nations*. Consequently, … air charter service brokers are not now being invite to bid for such services. This action was taken upon the advice of the ICAO and our Office of Legal Affairs." (emphasis added)

3. According to the policy established by the Secretary-General and as that policy is implemented in the standard United Nations aircraft charter agreement (see the annex to the present memorandum), a company that does not possess a valid license, in conformity with applicable international and national laws and regulations, to operate the type of aircraft in question in the areas required, is not eligible to render air charter services to the United Nations. This policy is sound and, in fact, necessary to ensure that the United Nations complies with the legislative requirements and policies of the various countries entered by the United Nations chartered aircraft. These countries insist on strict compliance with all licensing requirements.

4. In the example referred to in paragraph 3 of your memorandum of 2 May 1994, you stated that air company X had offered aircraft "which they do not have on their licence but are subcontracted from another operator licensed for the specific aircraft offered". That a company has a valid licence to operate certain aircraft in certain areas is not sufficient for it to be eligible to render aircraft charter services to the United Nations; it must be licensed to operate the types of aircraft in question in the areas required. Unless its license covers those aircraft and those areas of operation, the company is in the same position as one that has no operator's license at all. For reasons discussed below, allowing such a company to subcontract with a licensed operator is not an acceptable substitute, even if both the contractor and subcontractor sign the contract.[7]

5. The company with which the United Nations contracts must bear full legal and operational responsibilities for the performance of the air transportation services.[8] These include, for example, responsibilities to operate and maintain the aircraft and ensure its fitness and safety, and to ensure the quality and performance of the crew.[9] Under the arrangement referred to in your memorandum, the United Nations would be relying on the subcontractor for the performance of those essential core functions and responsibilities. However, the subcontractor would presumably[10] not have undergone the pre-qualification screening that we understand is now engaged in by the Purchase and Transportation Service in order to identify operators that are qualified, capable and reliable and have sufficient assets to cover their liability in the event of a problem with their performance. Indeed, the United Nations could be criticized, and perhaps even held legally liable, if it allowed its passengers to be carried by a company that it had not vetted through its own pre-qualification procedures.

6. In addition, a company that is not licensed to operate the aircraft in question cannot exercise the essential core responsibilities and functions referred to above. If the United Nations were to enter into a contract with such a company, knowing that it was legally incapable of performing those responsibilities and functions itself, and allow it to subcontract them to a licensed operator which co-signs the contract, an arbitral tribunal might find that the company was not bound by those obligations and responsibilities. Thus, in the event of an accident or other problem with the performance of the air transport services, the United Nations would have to rely on its ability to obtain legal redress from a subcontractor which it had not vetted through its pre-qualification procedure.

7. There is an additional legal difficulty with the course of action proposed in your memorandum. Under the process established by the Purchase and Transportation Service for the procurement of aircraft charter services, bids are solicited only from operators that have undergone the formalized pre-qualification procedure; indeed, we understand that some companies that have expressed interest in submitting bids have been told that they cannot be invited to bid because they have not yet been pre-qualified. It would be inconsistent with those procurement procedures, and unfair to companies that have been precluded from bidding, for the United Nations to sign a contract with a company that has not undergone the pre-qualification process, as a co-signatory to a contract with the pre-qualified firm.

8. In summary, the United Nations should be contracting only with properly licensed operators that have been vetted through the pre-qualification procedure and possess appropriate licenses to operate the aircraft offered for charter to the United Nations.

9. In connection with short-term charters, the Task Force recommendation was as follows:

> The Purchase and Transportation Service in consultation with the OLA should explore the possibility of employing identified correspondents in different parts of the world to receive and distribute the aircraft requirements and advertisements. In view of the possible savings to the United Nations, it is considered desirable that means be determined such that correspondents be sent copies of invitations to bid (ITB) and be allowed to submit bids on behalf of carriers/operators on the condition that the contractual documents be signed between the United Nations and actual aircraft operators."

10. The procedures contemplated, essentially, using correspondents as a possible means of disseminating awareness of United Nations aircraft requirements, but not contracting with them directly.

11. With respect to the possibility of correspondents being sent copies of ITBs and being allowed to submit bids on behalf of operators, the Task Force acknowledged that this could only be done "*on the condition that contractual documents be signed between the United Nations and actual aircraft operators*" (emphasis added), and recognized that the "means by which this could occur had "to be determined". This would require the development of appropriate legal mechanisms (e.g., perhaps a power of attorney from the operator authorizing the correspondent to act on its behalf) as well as appropriate provisions and requirements in the ITB itself. The question of how the procedures referred to above could be accommodated within the pre-qualification process would also have to be explored.

ANNEX

The new standard United Nations aircraft charter agreement referred to by the Secretary-General, which was prepared by this Office in consultation with attorneys from ICAO, includes, *inter alia*, the following provisions:

Article 4.3

> "The Charter shall retain operational responsibility for the air transportation services under this Charter Agreement and assures that those services will be performed in accordance with all applicable national and international regulations, rules, standards and recommended practices. In particular, the Carrier shall:
>
> "(*a*) Maintain the Aircraft in a fully safe and operative condition, and completely airworthy for the duration of this Charter Agreement, in accordance with laws and regulations which conform to applicable international regulations, rules, standards and recommended practices, in particular, annex 8 to the Convention on International Civil Aviation;[11]
>
> "(*b*) Safely operate the Aircraft at all times in compliance with laws and regulations which conform to applicable international regulations, rules, standards and recommended practices, in particular, annex 6 to the Convention on International Civil Aviation."

Article 4.4

"The carrier shall ensure that it has obtained all necessary certifications and authorizations by appropriate governmental authorities to perform the air transportation services required un-

der this Charter Agreement, and shall maintain such certifications and authorizations current and in good standing for the duration of this Agreement, and will avoid any actions which may lead to the cancellation of such certifications and authorizations In addition, the Carrier shall ensure that the air transportation services under this Agreement do not violate the terms and conditions of any lease agreement, mortgage or other relevant agreement."

Article 5.1

"It is understood that the Carrier is an independent contractor and shall remain in control of the Aircraft and shall be responsible for navigation, operation and maintenance of the Aircraft, and that the flight crew and maintenance personnel shall at all times remain the servants of the Carrier. The United Nations shall have the right to provide reasonable instructions to the Carrier and shall provide to the Carrier the schedule of flights, as required. However, the pilot in command shall retain the right to make decisions as to the feasibility of a flight in the light of weather and other conditions, for the safety of the passengers."

Article 6.3

"The Carrier shall possess and maintain a valid Air Operator Certificate or equivalent document issued by the appropriate governmental authority authorizing the Carrier to conduct air transport operations in the country and appropriate authorization to operate outside the country, in particular in the country or countries for which this Charter is intended. The Air Operator Certificate or equivalent document shall be issued under laws and regulations which conform to applicable international regulations, rules, standards and recommended practices, in particular, annex 6 to the Convention on International Civil Aviation."

In addition, the General Conditions for Aircraft Charter Agreements, which is annexed to the standard United Nations aircraft charter agreement, provides, in article 2(d):

"[T]he condition of the aircraft(s) and its operation shall conform to applicable national and international air navigation laws and regulations."

17 May 1994

4. Disclosure of contracts with firms to a non-official body of the United Nations Environment Programme

Memorandum to the Officer-in-Charge, CGCS, United Nations Environment Programme

1. This is in response to your memorandum of 11 August 1994 requesting the advice of the Office of Legal Affairs as to whether members of the Committee of Permanent Representatives of UNEP, which, we understand, is not an official body of UNEP, "could be given copies of certain contracts that are of particular interest to them".

2. According to a long-standing practice of the Secretariat, contracts entered into by the United Nations, including its subsidiary organs, are treated as privileged information in accordance with section 4 of the Convention on the Privileges and Immunities of the United Nations,[12] adopted by the General Assembly on 13 February 1946 ("the General Convention"), which provides that the archives of the United Nations, and in general all documents belonging to it or held by it (and contracts are documents of such a nature), shall be inviolable wherever located. Inspection or control of United Nations contracts by a Government or Governments would contravene that provision of the General Convention and adversely reflect on Article 100 of the Charter of the United Nations, under which Member States undertook to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

3. In the light of the above, the Committee of Permanent Representatives of UNEP should be advised that it is not possible for UNEP to provide the Committee with copies of specific contract. However, there would be no legal objection to providing the Committee of Permanent Representatives of UNEP with copies of standard texts normally used by the United Nations in negotiations with its suppliers and contractors (e.g., the United Nations General Conditions for General Contracts, the United Nations General Conditions for Purchase Orders, etc.). In this case, the Committee of Permanent Representatives of UNEP should be advised that such standard texts represent a basis for negotiation and that the actual contract documents may vary from case to case. We should be happy to provide you with samples of such standard texts, should the Committee request them.

23 August 1994

5. Administrative instructions— Policies of the United Nations in regard to transportation on United Nations-chartered aircraft — Issues of liability of the Organization and necessary insurance coverage for injuries, death or loss sustained during travel on United Nations-chartered aircraft

Memorandum to the Acting Director, Field Operations Division, Department of Peacekeeping Operations

1. This refers to a memorandum of 24 June 1994 requesting our advice on the proposal by the United Nations operation in Somalia UNOSOM II to issue the above-referenced administrative instruction on access to United Nations-chartered aircraft by non-UNOSOM passengers and cargo.

2. The proposed draft administrative instruction is to be issued by the Director of Administration of UNOSOM II and is addressed to:

(a) United Nations Agencies operating in Somalia;

(b) Non-Governmental Organizations (NGOs) operating in Somalia; and

(c) contracts providing goods and services to UNOSOM II.

The draft instruction sets out the criteria for the provision of transportation on United Nations-chartered aircraft to the personnel and cargo of the above three categories of entities, as well as to journalists and their cargo, and further proposes financial charges that are to be paid by such passengers for their travel and the transportation of their cargo.

3. In responding to this request, we shall first address the appropriateness of UNOSOM II issuing an administrative instruction and using it for the purpose of effecting arrangements for travel of non-UNOSOM personnel on United Nations-chartered aircraft. This opinion will then examine the policies of the Organization in regard to transportation on United Nations-chartered aircraft and the liability of the Organization and necessary insurance coverage for injuries, death or loss sustained during travel on United Nations-chartered aircraft, including the execution of release forms.

(*a*) Draft administrative instruction

4. We would first point out that an administrative instruction is used to "prescribe instructions and procedures for implementation of Secretary-General's bulletin and … to set forth office practices and procedures relating to more than one Department of the Secretariat".[13] It is the "principal means by which the Secretary-General and the heads of central services in the Secretariat communicate with the staff … on matters of financial, administrative and personnel policies and related instructions and procedures for implementing these policies".[14]

5. In the light of the foregoing, administrative instructions are issued at the United Nations Headquarters, are addressed to staff members and are sources of and constitute internal administrative law. Accordingly, and in order to avoid confusion with administrative instructions issued at United Nations Headquarters, a different term should be used for administrative issuances by the Director of Administration/Chief Administrative Officer (DOA/CAO) of a mission to personnel of that mission, e.g., [name of mission] administrative circular.

6. As is evident from foregoing, administrative issuances, whether administrative instructions issued at United Nations Headquarters or circulars issued at other duty stations and missions, are addressed to United Nations personnel and not to entities or individuals outside the United Nations. Accordingly, the proposed issuance by the DOA of UNOSOM II, which is addressed to non-UNOSOM entities, i.e., journalists, UNOSOM contracts and personnel of United Nations agencies and NGOs, is not the proper means for effecting the proposed arrangements. Different instruments would have to be used for each category of non-UNOSOM entities (e.g., contracts, memoranda of understanding or other types of agreements) for the purpose of agreeing on arrangements, such as the ones proposed by UNOSOM II in this case. It should be further pointed out that any arrangements to be contained such instrument would have to take into account, and conform to, the policies of the Organization in respect to transportation on United Nations-chartered aircraft, as elaborated in the following sections.

(*b*) Policies of the Organization with respect to transportation on United Nations-chartered aircraft

7. Transportation on United Nations-chartered aircraft in the context of peacekeeping missions is regulated by the applicable provisions of the Field Administration Handbook (FAH)[15] and, with respect to relocation/evacuation, the United Nations Field Security handbook (FSH).[16] Pursuant to the FAH and FSH:

(*a*) Staff members of the United Nations and United Nations specialized agencies The CAO of a mission may authorize international staff members of the specialized agencies of the United Nations to travel on United Nations-chartered aircraft for official travel on duty.[17] The CAO of a mission may also authorize international staff members of the United Nations and specialized agencies of the United Nations to travel on United Nations-chartered aircraft for non-duty purposes, provided that such travel must be on a "space available non-interference basis".[18] In emergency situations, internationally recruited staff members of the United Nations and United Nations specialized agencies may be relocated/evacuated from the mission area as part of a security plan;[19]

(*b*) Non-United Nations personnel. The CAO may authorize non-United Nations personnel, e.g., journalists, UNOSOM contractors and personnel of NGOs, to travel on United Nations-chartered aircraft if they are "traveling on or in connection with United Nations business including official guests of the United Nations", or because they have been "designated or named by the Secretary-General" to undertake official travel.[20] In regard to non-official travel, non-United Nations personnel could travel only if they have been "designated or named by the Secretary-General" and such travel must be on a "space available non-interference basis".[21] Non-United nations personnel could be relocated/evacuated from the mission area "when possible and to the extent feasible" if they are not nationals of the host country and if they are working in cooperation with the United Nations on the basis of contracts, special agreements or arrangements concluded between them and the Organization; travel for purposes of relocation/evaluation should be on a reimbursable basis[22] unless otherwise agreed to by the United Nations in the arrangements concluded between the United Nations and such non-United Nations entities.[23]

8. With respect to journalists, we understand that a policy decision has been made by the Under-Secretary-General for Peacekeeping Operations that journalists who have been duly accredited by the United Nations should be allowed to travel on aircraft operated in connection with United Nations peacekeeping missions. Accordingly, accredited journalists who have been authorized or named by the Secretary-General, or by the Under-Secretary-General for Peacekeeping Operations on behalf of the Secretary-General, could be permitted by the CAO of the mission to travel on United Nations-chartered aircraft. Such travel should be on a reimbursable, space available and non-interference basis.

9. In regard to UNOSOM contractors, their rights and obligations are set out in the contracts concluded between them and the United Nations. In fact, this Office had reviewed and cleared several contracts between the United Nations and contractors providing services to UNOSOM, pursuant to which the said contractors may travel on United Nations-charted aircraft for medical or security purposes. If the contracts with the UNOSOM contractors, which the mission currently proposes to provide with transportation on United Nations-charted aircraft, do not include such provisions, travel by such contractors on aircraft chartered by the United Nations, and the costs thereof, should be negotiated on a case-by-case basis and set out in the contracts with them, or provided in amendments to such contracts. Please note that the contractual provisions regulating such travel must be consistent with the applicable provisions of the FAH and FSH. Pursuant to those provisions, the CAO of the mission could authorize UNOSOM contractors to travel on United Nations-chartered aircraft on a reimbursable basis if such travel is "on or in connection with United Nations business", namely, in the event that their travel relates to the performance of their obligations under the contracts. If UNOSOM contractors are not traveling on United Nations business, they could only travel if they have "been designated or named by the Secretary-General" to so travel, and such travel should be on a reimbursable, space available and non-interference basis. UNOSOM contractors could also be relocated/evacuated for their protection, when possible and the extent feasible, and, again, on a reimbursable basis.

10. If the United Nations had concluded specific arrangements with NGOs whereby the NGOs provide services to, or cooperate with, UNOSOM II in connection with the mission's mandate, then the personnel of said NGOs could be authorized by the CAO of the mission to travel "on or in connection with United Nations

business", to the extent that such travel would be duty-related. Said personnel could also be relocated/evacuated for their protection , when possible and to the extent feasible, and on a reimbursable basis. If the personnel of the NGOs are not traveling on United Nations business and in connection with the mandate of UNOSOM II, they could only travel on United Nations-chartered aircraft if they have "been designated or named by the Secretary-General" to so travel, and such travel should be on a reimbursable and space available, non-interference basis.

(*c*) *Liability of the Organization and insurance coverage*

11. The liability and insurance considerations set forth in paragraphs 12 to 16 below must be taken into account in connection with requests by the individuals mentioned in paragraphs 7 to 10 above for transportation on United Nations-charted aircraft.[24]

12. The transport of non-united nations personnel should not be allowed to travel on aircraft chartered by the United Nations unless: (a) adequate insurance coverage exists to cover claims by such persons for death, injury, or loss of, or damage to, their property; and (b) a release form is executed by every non-United Nations individual prior to being provided with United Nations transportation.

13. With respect to insurance, we note that the Organization itself does not at present maintain insurance which would cover claims for compensation by non-United Nations personnel for death, injury or loss of, or damage to, their property sustained by them while on board United Nations-chartered aircraft. However, in the event the United Nations is chartering civil aircraft from commercial aircraft operators under the standard aircraft charter agreement currently used by the United Nations for such purpose, the Agreement requires in article 9.1 that the carrier maintain comprehensive third-party liability insurance to cover all persons authorized by the United Nations to travel on the aircraft. Article 9.1 states:

> "9.1. The Carrier shall provide and maintain for the duration of this Charter Agreement from an insurance carrier acceptable to the United Nations comprehensive insurance coverage to cover its liability under this Charter Agreement. Such insurance shall, *inter alia*, consist of:
>
> "(a) Comprehensive third-party liability insurance, including passenger legal liability, sufficient to cover all persons authorized by the United Nations to use the Aircraft, and protecting the United Nations and the Carrier against claims for bodily injury or death and property damage up to a combined minimum of US$ 20 million per occurrence. Notwithstanding the generality of the foregoing, such insurance shall be sufficient to cover, at a minimum, passenger liability for death or bodily injury up to $75,000 per passenger, as provided in paragraph 4 of the United Nations General Conditions for Aircraft Charter Agreement set forth in Annex B."

If such aircraft are not provided to the United Nations under the standard aircraft charter agreement, the particular agreement with the carrier would have to be examined to ascertain the individuals allowed to be taken on board the aircraft and the extent of insurance coverage for those individuals. We would emphasize that, should the agreement with the carrier prohibit transportation of certain categories of persons, e.g., non-United Nations personnel, the carrier would have the right to

reject any liability regarding injury sustained by such persons on board the aircraft. It is thus of critical importance that the CAO of the mission for which the aircraft is chartered be familiar, and ensure conformity, with the terms of the agreement with the carrier, in particular those provisions concerning the individuals that are allowed to be taken on board the aircraft.[25]

14. In addition to commercial carriers providing civil aircraft, air transportation services are provided to the United Nations by Governments under letters of assist. Such services involve the use of civil and/or military aircraft. In this connection, we would urge that non-United Nations personnel should not be permitted to travel on aircraft provided under letters of assist. As the United Nations does not carry insurance for such aircraft, there is no passenger liability insurance to cover any claims by non-United Nations personnel for death, injury, or loss of, or damage to their property sustained by them during travel on such aircraft. We also strongly recommend that, with respect to military aircraft provided under letters of assist, only military personnel, as agreed to with the Government providing such aircraft, should be allowed on board those aircraft.

15. With respect to release forms, this Office has, when giving advice on previous occasions, pointed out that, while the use of the release form might not afford the United Nations full protection from legal liability,[26] it could, in conjunction with adequate insurance coverage for passengers, at least serve to minimize the exposure of the Organization in respect of third party claims. Having regard to the fact that even with insurance coverage and a signed release form the Organization could still face potential residual financial liability in the event that non-United Nations personnel suffered death, injury or loss on board United Nations-chartered aircraft, we would recommend that, prior to authorizing non-United Nations personnel on board United Nations-chartered aircraft, the concurrence of the ACABO and the Under-Secretary-General for Administration and Management be obtained.

22 September 1994

6. Compensation for service-incurred death, injury or illness of consultants employed by the United Nations under a special service agreement

Memorandum to the Secretary of the Advisory Board on Compensation Claims

1. Please refer to your memorandum of 22 September 1994 on the above-captioned subject. You requested our advice concerning the issue of compensation benefits for service-incurred death, injury or illness to be provided to Government-supplied consultants, employed by the United Nations under a special service agreement (SSA) on a *pro bono* (i.e., non-reimbursable) basis. You noted that, pursuant to the relevant provisions of Appendix D to the Staff Rules,[27] the basis for the calculation of such compensation in cases of service-incurred death, injury or illness is the claimant's annual pensionable remuneration which in the case of *pro bono* consultants does not exist (since they work for the Organization free of charge) and therefore "would not give rise to any compensation".

2. The policy of the Organization with regard to employment of consultants is reflected in ST/AI295 of 19 November 1982 on the subject of "Temporary staff and individual contractors". Paragraph 15 of that instruction provides, *inter alia*, that:

> "If the services of an individual as an individual contractor are provided free of charge, a special service agreement may be issued with nil or token (e.g., one dollar a year) remuneration for the purpose of providing the individual with the appropriate status while performing the services specified in the agreement and in order to cover travel costs and related expenses as appropriate."

3. Paragraph 22 of the same instruction provides that:

> "An individual contractor engaged under a special service agreement … shall be entitled in accordance with the terms of the special service agreement in the event of death, injury or illness attributable to the performance of services on behalf of the United Nations … to compensation equivalent to the compensation which would be payable under Appendix D to the Staff Rules of the United Nations (ST/SGB/Staff Rules/Appendix D/Rev.1) to a staff member performing similar functions."

4. Thus, in view of its paragraph 15, ST/AI/295 is applicable to *pro bono* consultants. However, paragraph 22 does not make any distinction in the treatment of contractors who receive remuneration from the Organization and those whose services are provided free of charge: both categories appear to be entitled to compensation payable under Appendix D to the Staff Rules.

5. Accordingly, the dilemma to which you referred in your memorandum seems to be not of a substantive character (i.e., whether *pro bono* consultants are entitled to Appendix D coverage: they are pursuant to ST/AI/295), but rather of a technical nature (i.e., how the amount of compensation under Appendix D should be calculated). In this connection, we note that the General Assembly in paragraph 11 of resolution 45/258, "Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations", endorsed the proposals made by the Secretary-General on the use of civilian personnel in peacekeeping operations[28] contained in his report of 18 September 1990 (A/45/502). Paragraph 16 of that report provided that:

> "Although the civilian personnel concerned would have no contractual relationship with the United Nations, the Organization would recognize claims for compensation for death, disability and illness attributable to service with the United Nations. It is proposed that the arrangements governing the payment of such compensation should be the same as those applying to military observers."

6. According to a standard clause contained in Notes for the Guidance of Military Liaison Officers (MLOs)/Police Monitors on Assignment:

> "The United Nations provides MLOs/Police Monitors with compensation coverage 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, to the maximum amount of US$ 50,000, or twice the MLO/Police Monitor's annual base salary, less allowances, whichever is greater."

7. Since military observers do not receive salary from the United Nations, it appears that the "annual base salary" referred to in the above citation can only mean salary received by observers from their respective governments. In other words, the calculation, by the United Nations, of compensation for death, injury or illness in case of military observers seems to be based on their national salaries. We would suggest, however, that you verify with the Controller and the Assistant Secretary-General for Human Resources Management whether their offices have difficulties with our view.

8. It should also be noted that the legal status of a military observer is not identical to that of a *pro bono* consultant: the latter, for example, concludes an SSA with the United Nations, while the former has no direct contractual relationship with the Organization. We therefore support the view expressed in the final sentence of paragraph 3 of the memorandum of 10 August 1994 that the issue of "adapting" the above formula for compensating government-supplied *pro bono* consultants should be examined in consultation with relevant units of the Office of Human Resources Management.

9. In our view, such "adaptation" could be carried out in the form of an addendum to or a revision of ST/AI/295 clarifying that, for Government-supplied *pro bono* consultants, the calculation of compensation under Appendix D is based on their national salaries.

7 October 1994

7. Conclusion of a contract — General terms and conditions applicable to contracts for goods and services — Liability for United Nations-authorized purchase order

Memorandum to the Senior Legal Officer, Legal Liaison Office, United Nations Office at Geneva

1. This refers to your memoranda of 8, 13 and 14 July 1994 forwarding our comments on a draft memorandum from you to the Director, Division of Administration, United Nations Office at Geneva, in connection with the question of whether a contract has been concluded between the United Nations and a company for the purchase of additional equipment for a sorting/packing machine, and for which additional equipment this company seeks payment.

2. We have received your draft memorandum together with the accompanying documents that you forwarded to us. We have some comments on the draft memorandum which are set out below and are based on our understanding of the facts from the documents presented to us.

Outline of facts

3. We understand that an unauthorized purchase order was sent to Company A on 4 January 1994 for additional equipment for a sorting/packing machine previously purchased from that Company. The purchase of the additional equipment had not been recommended by the Contracts Committee or approved by the Director-General of the United Nations Office at Geneva. At the request of the Office, the

Company returned the purchase order on 14 January 1994 under the pretext advanced by the Office that an authorized signature was missing from the purchase order. The Company wrote to the United Nations Office at Geneva on 5 and 17 May 1994, stating that it had returned the purchase order relying on the fact that the order would be returned after the missing signature was added, and protesting that the order had not yet been sent back. On 17 May 1994, the Office advised the Company that the purchase order had been sent out by mistake and that the matter remained "suspended." On 27 June 1994, the Company informed the Office that after receiving the purchase order it had proceeded to prepare and assemble the equipment ordered by the United Nations, for which it now claims payment.

Conclusion of contract

4. We agree with your conclusion that a contract has been concluded between the United Nations and the company for the additional equipment. Therefore, the United Nations must either accept delivery and pay the price for the equipment or cancel the contract and pay cancellation costs.

5. With respect to the General Terms and Conditions Applicable to Contracts for Goods and Services concluded by the United Nations Office at Geneva (hereinafter "General Terms and Conditions"), discussed in paragraphs 19 to 21 of your draft memorandum, we agree that the purchase orders used by the United Nations Office at Geneva should physically attach the General Terms and Conditions rather than merely refer to another document containing those General Terms and Conditions. Indeed, the General Terms and Conditions should be provided to all potential contractors at the time of soliciting bids, offers or proposals as well as be included in the contracts concluded with the contractors.

6. However, the present case does not appear to involve a dispute as to the validity or applicability of the General Terms and Conditions. We thus suggest that you advise the Administration that the General Conditions of Contract included in the purchase order sent to the Company stated that the General Terms and Conditions govern procurement of equipment by the United Nations Office at Geneva and that receipt of the purchase order connotes acceptance of the General Terms and Conditions. Article 5(a) of those General Terms and Conditions provides that a contract will be binding on the United Nations Office at Geneva when the Office "has notified the successful bidder of its acceptance of his bid by sending him" the purchase order, upon its receipt, and that the purchase order will be considered by the Office as having been concluded if the contractor does not acknowledge receipt thereof within a reasonable period of time. In other words, the Office's own General Terms and Conditions make the purchase order, upon its receipt, a concluded contract without the need for acceptance by the contractor. Thus, the purchase order became a contract in January 1994 when the Company received the purchase order.[29]

7. It could also be noted that, even if a formal contract had not been concluded pursuant to the express terms of the General Terms and Conditions, under generally accepted principles of commercial law, a written order by one party which reasonably induces action causing expense by another person would entail liability for the person sending the order. In the present case, the company reasonably relied on the purchase order to its detriment, i.e., it spent time and money in assembling the equipment. The United Nations is thus liable as its actions caused this expense.

Claim for payment

8. In our view, there are therefore two options open to the Office in connection with the Company's claim for payment: (1) the Office could take delivery of, and pay for, the equipment under the terms of the purchase order; or (2) the Organization could cancel the purchase order since the purchase was not approved, and pay reasonable compensation to the Company relating such cancellation.[30]

9. We note that the present claim stems from an unauthorized purchase order. In this regard, we would recommend that, after the claim is settled, the matter be referred to the Office of Internal Oversight Services for advice as to whether there is any need for modification of the United Nations Office at Geneva contracting procedures to ensure that unauthorized purchase orders are not sent to contractors.

8 November 1994

8. Compensation for alleged damage to a United Nations Development Programme Office — Termination of a lease based on "compelling circumstances"

Memorandum to the Coordinator, CPSP/DAIS, United Nations Development Programme

1. This is in reference to your memorandum dated 5 November 1994 in which you sought our advice on the compensation claimed by the landlord of the UNDP premises in Aden for alleged damage to his property during the war of the Yemens. Attached to that memorandum you enclosed a letter from the landlord in which he raised several legal points to support his claim for compensation from UNDP. We also make reference to your two facsimiles, the first, dated 9 November 1994, by which you provided us with the lease agreement concluded between UNDP and the landlord, on 13 November 1993, and the second, dated 11 September 1994, with the letter, reference ADM/250/23, dated 11 September 1994, that the UNDP Resident Representative in Yemen addressed to the landlord communicating the decision by UNDP to terminate the lease.

2. The issue in this matter is whether compensation is due to the landlord for alleged damage caused to the premises and for termination of the lease before the date of its agreed expiration.

3. We note that, in accordance with article 1, the lease was to expire on 31 October 1998. However, UNDP decided to terminate the lease before that date, based on "compelling circumstance" and citing articles 6 and 16 of the lease agreement (see letter ADM/250/23):

(*a*) Article 6 and of the lease agreement refers to the case where UNDP decides to close down its office in Yemen, or to remove it from Aden, or to change the level of the UNDP representation in Yemen or to acquire its own property in Yemen;

(*b*) Article 16 envisages three different situations: first, total destruction of the premises; second, the premises are rendered unfit for further tenancy or for the use of UNDP; third, partial destruction of the premises. The first two give the

right to UNDP to immediately terminate the lease. The third one gives UNDP the right to choose between termination (giving notice within 30 days after the destruction) or remain on the premises, with a proportionate reduction of the rent.

It seems that the decision to terminate the lease was essentially based on the damage to the premises covered by article 16.[31] This decision owould not result in any legal liability for UNDP *vis-à-vis* the landlord, since article 16 gives UNDP the right to terminate the lease in case of partial or total destruction of the premises, or if the premises are rendered untenantable. The full article reads:

> "Should the Building or any part thereof be damaged by fire or any other cause, this Lease shall, in case of total destruction of either the Building or the Premises or upon either the Building or the Premises or upon either the Building or the Premises being rendered unfit for further tenancy or for use by UNDP, immediately terminate and, in case of partial destruction or damage of either the Building or the Premises, shall terminate at the option of the UNDP upon given notice in writing to the Lessor within thirty days after such fire or partial destruction or damage. In the event of termination of the Lease under this paragraph, no rent shall accrue to the Lessor after such total or partial destruction or damage. Should the UNDP elect to remain on premises rendered partially untenantable, it shall have the right to a proportionate rebate or reduction of the rental payments."

4. As regards the responsibility for the damage caused to the premises, the lease agreement provides, under article 10, that the lessor shall insure the premises against damage by fire other causes and shall hold UNDP harmless from any liability for such damage. Thus, the lessor has the sole responsibility for the damage caused to the premises. Furthermore, UNDP is not responsible for the damage caused by circumstances over which UNDP has no control at all, and, in this case, it is not disputed that the damage to the premises was due to the landing of rockets in a war situation. UNDP is, however, exclusively responsible for the loss of its own property, in accordance with article 12 of the lease agreement. We would also like to underline that UNDP cannot be held responsible for the looting which followed the damage caused by the landing of the rockets, as this would be a direct consequence of an event over which UNDP had no control. In the war situation which prevailed at that time in Yemen, it could not have been possible for UNDP to secure the premises after damage occurred.

5. As a conclusion it is the opinion of this Office that no compensation is due to the lessor for early termination of the lease and UNDP cannot be held responsible for the damage caused to the premises by the rockets which landed in the vicinity of the UNDP Office, or the loss of the landlord's property due to looting. The UNDP Resident Representative suggests that UNDP should make and *ex gratia* payment to cover the loss sustained by the landlord. We believe that such a payment is a matter of policy for UNDP to take in accordance with UNDP financial regulation 14.3 and rule 114.14.

17 November 1994

COMMERCIAL ISSUES

9. United Nations policy concerning gifts and commercial credits — Financial regulation 7.2 to 7.4 and financial rule 107.5 to 107.7 — Use of the United Nations name — General Assembly resolution 92(I) of 7 December 1946

Memorandum to the Senior Legal Officer, Executive Director and Management, United Nations Conference on Trade and Development (UNCTAD)

1. Please refer to your memorandum of 20 June 1994 concerning preparation for the United Nations International Symposium on Trade and Efficiency to be held from 17 to 21 October 1994 in Columbus, Ohio. You noted that one of the subjects of the Symposium is the application of electronic data transmission techniques to the possibility of distributing, free of charge, to the Symposium participants video cassettes and CD-ROMs with basic information on the subjects of the Symposium, and also the possibility of making short films for panel discussions. You further noted that certain private commercial companies are prepared to make those cassettes, CD-ROMs and films free of charge to the United Nations. You requested advice concerning the policy of the United Nations in respect of: (a) accepting gifts from commercial companies, and (b) commercial credits for such gifts (e.g., this video cassette was manufactured by [name of corporation] for the United Nations").

(a) Gifts

2. The policy of the United Nations concerning acceptance of gifts is based on United Nations financial regulations 7.2 and 7.4 and financial rules 107.5 to 107.7 promulgated under them. Those rules stipulate as follows:

"*Rule 107.5*

"In cases other than those approved by the General Assembly, the establishment of any trust fund or receipt of any voluntary contribution, gift or donation to be administered by the United Nations requires approval of the Secretary-General, who may delegate this authority to the Under-Secretary-General for Administration and Management.

"*Rule 107.6*

"No voluntary contribution, gift or donation for a specific purpose may be accepted if the purpose is inconsistent with the policies and aims of the United Nations.

"*Rule 107.7*

"Voluntary contributions, gifts or donations which directly or indirectly involve an immediate or ultimate financial liability for the Organization may be accepted only with the approval of the General Assembly."

3. Although it appears that the proposed gifts would be consistent with the policies and aims of the Organization and that their acceptance would not directly or

indirectly involve additional financial liability for the Organization, you must seek the concurrence of the Controller prior to taking any further action in this case as his Office has the authority delegated pursuant to financial rule 107.5.

(b) Commercial credits

4. The use of the United Nations name is reserved for the official purposes of the Organization in accordance with General Assembly resolution 92(I) of 7 December 1946. Moreover, that resolution expressly prohibits any use of the United Nations name for commercial purposes. In order to implement the commercial use prohibition, the practice of the United Nations has been to include in its commercial contracts a standard clause preventing any entity contracting with the Organization from advertising or making public the fact that it provided services to the United Nations. The purpose of this clause is to prevent solicitation for business on the basis of a connection with the United Nations.

5. The same policy and practice must be applied in this case, notwithstanding the fact that the cassettes, CD-ROMs and films in question would be donated to the United Nations free of charge. The rationale behind this is that the donations would be effected by commercial entities and that the United Nations cannot allow its name to be used in connection with a company or its services and/or products. However, it would be permissible if, on a separate film or CD-ROM frame, it was stated that that film, cassette or CD-ROM was made available free of charge by [name of corporation]. That corporation would have to agree not to otherwise publicize the donation to the United Nations.

7 July 1994

COMMUNICATIONS

10. Legality of radio broadcasting by the United Nations towards a State from international waters or from a third State — General Assembly resolution 13(I) of 13 February 1946 — Article 39 of the International Telecommunication Convention — Article SVI of the Agreement between the United Nations and the International Telecommunication Union — Article 109 of the 1982 United Nations Convention on the Law of the Sea — ITU Radio Regulations

Memorandum to the Director, Department of Political Affairs

1. This is in response to your two memoranda, dated 11 January and 25 January 1994, in which you requested the views of the Office of Legal Affairs on the legality of radio broadcasting by the United Nations towards Haiti from international waters or from a third country. We set forth below our views based on the Charter of the United Nations, relevant General Assembly resolutions and law of the sea and telecommunications act.

Radio broadcasting by the United Nations

2. The authority of the United Nations to engage in radio broadcasting may be derived from the approval by the General Assembly in 1946 of a recommendation of Technical Advisory Committee on Information concerning Policies, Functions and Organization of the Department of Public Information, as follows:

> "The United Nations should also have its own radio broadcasting station or stations, with the necessary wavelengths, both for communications with Members and with branch offices, and for the information of United Nations programmes."[32]

3. Moreover, article 39 of the International Telecommunication Convention[33] recognizes that "the telecommunication operating services of the United Nations shall be entitled to the rights and bound by the obligations of this Convention and of the Administrative Regulations annexed thereto"; and article XVI of the Agreement between the United Nations and the International Telecommunication Union (Atlantic City, 1947)[34] states:

> "1. The Union recognizes that it is important that the United Nations shall benefit by the same rights as the Members of the Union for operating telecommunication services.
>
> "2. The United Nations undertakes to operate the telecommunication services under its control in accordance with the terms of the International Telecommunication Convention and the regulations annexed thereto…"

Radio broadcasting from international waters

4. We understand that one suggestion has been made according to which radio broadcasts by the United Nations to Haiti would emanate from a station located on a platform in "international waters". Article 109 of 1982 United Nations Convention on the Law of the Sea[35] provides:

> "1. All States shall cooperate in the suppression of unauthorized broadcasting from the high seas.
>
> "2. For the purposes of this Convention, 'unauthorized broadcasting' means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls."

5. Moreover, paragraph 1(1) of article 30 of the ITU Radio Regulations, to which telecommunication operations of the United Nations must conform (see para. 3 above), provides that:

> "The establishment and use of broadcasting stations (sound broadcasting and television stations) on board ships, aircraft or any other floating or airborne objects outside national territories is prohibited."

Paragraph 6 of article 59 of the ITU Radio Regulations provides that:

"The operation of a broadcasting service[36] by a ship station at sea is prohibited."

6. In view of the above, we conclude that the operation of a radio station in international waters transmitting to Haiti would be in violation of applicable international legal rules.

Radio broadcasting from a third country

7. In order for the United Nations to be able to install and operate its own radio station in a third country for broadcasting to Haiti, the United Nations would have to conclude a formal agreement with the third country. The agreement would, *inter alia*, grant to the United Nations the right to install and operate the radio station, establish the inviolability of the premises and determine the status of the personnel attached to the radio station.

8. In addition, the United Nations would have to obtain registration of its radio frequencies under the International Telecommunication Convention. The United Nations has the rights of a Telecommunication Administration, including the registration of radio frequencies with the International Frequency Registration Board, an organ of ITU. Radio Regulations adopted pursuant to the ITU Convention lay down procedures for consultations that would be applied in the event that United Nations broadcasts might cause technical interference with telecommunications activities of ITU Member States.

9. If the United Nations were to enter into a lease or other arrangements for the use of the facilities and frequencies of an already existing radio station in a third country (the transmissions of which can reach Haiti), an appropriate agreement would have to be concluded with the station establishing the terms and conditions of usage.

10. We understand that the proposal for broadcasting by the United Nations to Haiti has arisen in the context of the efforts of the United Nations to promote a resolution of the political situation in that country and as a means of enabling the United Nations to keep the population of Haiti informed of its activities. In this respect we note that, in somewhat comparable contexts in the past, broadcasting by the United Nations has been on the basis of a specific legislative mandate. We consider that authorization by the Security Council would be advisable in the present case, particularly in view of the possibility that the broadcasts in question might be alleged by some parties to be contrary to the principle of non-interference in matters essentially within the domestic jurisdiction of a State. We note that, under paragraph 7 of Article 2 of the Charter of the United Nations, that principle shall not prejudice the application of enforcement measures under Chapter VII. In addition, we point out that, if the arrangements for broadcasting by the United Nations would require financial expenditures, authorization by the General Assembly would be required.

3 February 1994

11. Question of possible private ownership and operation of the United Nations Telecommunications Network — 1989 International Telecommunication Union resolution No. 50

Memorandum to the Director, Office of General Service, Department of Administration and Management

1. Please refer to your memorandum, on the above-captioned subject, dated 1 July 1994. It is noted that the Secretary-General of the United Nations has proposed adding seven antennae to the United Nations satellite telecommunications system which presently consists, among other facilities, of 11 satellite antennae. This proposal was reviewed and, with some qualifications, endorsed by the Advisory Committee on Administrative and Budgetary Questions. It is also noted that, in the course of the informal consultations in the Fifth Committee at the current session of the General Assembly, some delegates asked whether the United Nations network facilities could be owned, operated and/or maintained by an outside private entity or telecommunications authority. You seek our views on the issue of possible private ownership and operation of the United Nations telecommunications network; in particular, whether the United Nations would be in violation of ITU resolution No. 50 of 1988 if the antennae in question were to be owned by a private commercial operator. We set out our views below.

General comments

2. The authority of the United Nations to engage in radio broadcasting and to have a telecommunication network may be derived from the approval by the General Assembly in 1946 of a recommendation of the Technical Advisory Committee on Information concerning Policies, Function s and Organization of the Department of Public Information, as follows:

> "The United Nations should also have its own radio broadcasting station or stations, with the necessity wavelengths, both for communications with Members and with branch offices, and for the information of United Nations programmes."[37]

3. Article 39 of the 1982 International Telecommunication Convention (Nairobi)[38] recognized that "the telecommunication operating services of the United Nations shall be entitled to the rights and bound by the obligations of this Convention and of the Administrative Regulations annexed thereto"; and article XVI of the Agreement between the United Nations and the International Telecommunication Union (ITU) (Atlantic City, 1947) states:

> "1. The Union recognizes that it is important that the United Nations shall benefit by the same rights as the Members of the Union for operating telecommunication services.
>
> "2. The United Nations undertakes to operate the telecommunication services under its control in accordance with the terms of the International Telecommunication Convention and the regulations annexed thereto…"

4. Pursuant to the above provisions, the United Nations has the same rights and is bound by the same obligations as the States Members of ITU. Accordingly the United Nations, similarly to States, appears to have its own authority to exercise

those rights and to discharge those obligations in the way which the Organization deems most appropriate.

Possible private ownership and operation of the United Nations telecommunication network

5. The question, as formulated in the Fifth Committee, involved a number of aspects which will be considered separately below.

(*a*) *Private operation of the United Nations-owned network*

6. If the United Nations telecommunication network continues to be owned by the Organization, the choice of the operation and/or maintenance of the network remains an internal affair of the United Nations. In other words, if the Organization believes that it would be in its best interest to have its telecommunication network operated and/or maintained by an outside private commercial entity, the United Nations may enter into a contract with such entity setting out specific terms and conditions under which the system may be operated.

7. Naturally, specific provisions of such a contract will have to be in full accord with all relevant international obligations of the United Nations under applicable agreements in order to ensure that actual operation and/or maintenance of the network will not be in violation of those obligations.

(*b*) *Use by the United Nations of a telecommunication network owned and operated by an outside private commercial entity*

8. If the United Nations decides to use a telecommunication network owned and operated by an outside private entity, that network will no longer be considered a United Nations network for the purposes of the above-cited international agreements. In this case, the Organization will have to conclude a contract with such entity outlining all specific terms and conditions of United Nations use of the network.

9. Under this scenario, the entity itself will have primary responsibility for discharging all relevant obligations under international telecommunication law (registration of radio frequencies, etc.) in accordance with the procedures established in the national legislation of a State on which territory this entity operates.

10. It should also be borne in mind in this connection that telecommunication facilities to be used by the United Nations under this scenario would no longer enjoy the status of United Nations facilities. For example, the entity operating those facilities will not be immune from legal process; its property, including facilities used by the Organization under the above contract, will not be inviolable, etc. This change of status may, at least in theory, adversely affect such valuable features of the current United Nations-owned network as its confidentiality.

(*c*) *Possible transfer of ownership of existing United Nations telecommunication facilities to an outside private entity*

11. In principle, the Organization has the right to dispose of its own property, but possible sale of United Nations telecommunication facilities should not be in contradiction with the existing obligations of the Organization under applicable international agreements and the legal arrangement between the United Nations and governments on the territory of which those facilities are located.

12. For example, as far as United Nations Headquarters is concerned, section 4 of the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations, of 26 June 1947,[39] contains a specific list of radio facilities which the United Nations "may establish and operate in the headquarters district" and requires that "other radio facilities" should be "specified by supplemental agreements between the United Nations and the appropriate American authorities". In view of this provision, it appears that there would be no legal impediment for the Organization to sell a telecommunication facility which is currently located in the headquarters district if, after the sale, the facility is removed from the district.

13. If, however, the facility is not removable or the seller and the buyer would prefer to keep it on the territory of the Headquarters district, the concurrence of the appropriate American authorities will be necessary in accordance with the relevant provisions of the 1947 Headquarters Agreement. It is not evident that those authorities would agree that non-United Nations facilities could be located and operated on the territory of the United Nations Headquarters district.

ITU resolution No. 50

14. ITU resolution No. 50 of 1989, entitled "Use of the United Nations Telecommunications Network for the Telecommunication Traffic of the Specialized Agencies," adopted by the ITU Plenipotentiary Conference (Nice, 1989), does not specifically address the question of ownership of the United Nations telecommunication network or of parts thereof. The resolution's objective seems to authorize the use of the network by the specialized agencies and to establish certain conditions for such use (see paras. 1–4 of the resolution).

15. However the resolution appears to be based on the assumption that the telecommunication network in question indeed belongs to the United Nations. Thus, if ownership of the existing United Nations telecommunication network is transferred to an outside private entity, the question as to whether and under which terms and conditions the network may carry traffic of the specialized agencies will have to be re-examined by all parties concerned: ITU, United Nations, specialized agencies and the new owner of the network.

Conclusion

16. In view of the above, we share your view that there are significant practical difficulties in turning over the ownership, operation or maintenance of the whole existing United Nations telecommunication network to an outside commercial entity. Therefore, if this option is indeed contemplated, a thorough and comprehensive analysis (after consultations with ITU and host Government) of such an idea would be necessary.

15 July 1994

12. Radio broadcast systems for United Nations peacekeeping operations — Provisions on communications in the status of forces agreements — Article XVI of the Agreement between the United Nations and the International Telecommunication Union — Legal bases for the establishment of radio broadcasting by the United Nations

Memorandum to the Acting Director, Field Operations Division, Department of Peacekeeping Operations

1. This is with reference to your memorandum of 16 November 1994 on the above subject. We understand that the Director of Peacekeeping Operations intends to establish a policy to set up and operate radio broadcasting stations in all future peacekeeping mission areas. In this connection, you requested to know: (a) whether the provisions on communications in the status-of-forces agreements concluded between the United Nations and States on whose territories peacekeeping operations are deployed would serve the purpose; (b) what would be the appropriate procedure to follow when no status of forces agreement has yet been concluded; and (c) whether specific provisions in the relevant Security Council resolution establishing a peacekeeping operation would ensure the establishment of radio broadcasting.

2. The provisions regarding communications in existing status of forces agreements are similar to those contained in paragraphs 10 and 11 of the model agreement.[40] Paragraph 10 provides for the application of article III of the Convention on Privileges and Immunities of the United Nations concerning facilities in respect of communications. Paragraph 11 provides, as far as the use of radio is concerned, for the general legal framework for the United Nations and satellite network. Such provisions are intended to ensure that peacekeeping operations are equipped with a reliable telecommunication network to communicate by all appropriate means, including radio satellite, without delay or restriction, with United Nations offices located within the territories where peacekeeping operations are deployed and outside such territories. Therefore, the communications facilities provided for under the model status-of-forces agreement are designed to ensure official communications within and between all United Nations offices.

3. While the above-mentioned telecommunications facilities serve the purpose of United Nations internal communications, the facilities to operate United Nations radio broadcasting would serve the purpose of disseminating information to the general public to promote accurately the activities of the United Nations peacekeeping operation concerned. Therefore, the relevant provisions on communications in the model status-of-forces agreement may not be understood as constituting a sufficient basis for United Nations peacekeeping operations to engage in radio broadcasting.

4. The authority of the United Nations to engage in radio broadcasting derives from the approval by the General Assembly in its resolution 13 (I), dated 13 February 1946, of a recommendation of the Technical Advisory Committee on Information concerning Policies, Functions and Organization of the Department of Public Information, as follows:

> "The Department should actively assist and encourage the use of radio broadcasting for the dissemination of information about the United Nations. To this end it should, in first instance, work in close cooperation with radio

broadcasting organizations of the Members. The United Nations should also have its own radio broadcasting station or stations, with the necessary wavelengths, both for communication with Members and with branch offices, and for the origination of United Nations programmes. The station might also be used as a centre for national broadcasting systems which desire to cooperate in the international field. *The scope of the radio broadcasting activities of the United Nations should be determined after consultation with national radio broadcasting organizations*." (emphasis added)

5. Therefore, the General Assembly has provided the legislative authority for the United Nations to operate its own radio broadcasting stations.

6. Moreover, article XVI of the Agreement concluded between the United Nations and the International Telecommunication Union (ITU) defining the relationship between the two organizations provides as follows:

"1. The union recognizes that it is important that the United Nations shall benefit by the same rights as the Members of the Union for operating telecommunication services.

"2. The United Nations undertakes to operate the telecommunication services under its control in accordance with the terms of the International Telecommunication Convention and the Regulations annexed thereto …"

7. Pursuant to the above-mentioned provisions, the United Nations has the same rights and is bound by the same obligations as the States members of ITU in operating its telecommunication services, including radio broadcasting.

8. However, in order for the United Nations to exercise the authority conferred upon it by the General Assembly resolution 13 (I) and to exercise the rights and discharge the obligations provided for in the International Telecommunication Convention and the Regulations annexed thereto, the consent of the State on whose territory radio broadcasting station(s) will be installed is required and an agreement between the United Nations and that State is necessary. Such agreements are required in the context of the United Nations activities including peacekeeping. Precedents for such agreements exist. United Nations Headquarters Agreements with several States, such as with the United States and Kenya, contain specific provisions on radio broadcasting facilities.

9. As to whether specific provisions in the relevant Security Council resolution establishing a peacekeeping operation would ensure the establishment of radio broadcasting, unless the relevant paragraph of the resolution is adopted under Chapter VII of the Charter, the aforementioned requirements must be met.

10. Accordingly, in the context of United Nations peacekeeping operations, the consent of the State on whose territory radio broadcasting will be installed is necessary and appropriate legal arrangements should be reached between the United Nations and that State. This could be done either through the inclusion of the relevant provisions into the status-of-forces agreement or by special arrangement in the form of an exchange of letters. Such an exchange of letters will be particularly necessary in case a status-of-forces agreement has already been concluded. As indicated in paragraph 3 above, existing status-of-forces agreements do not provide a sufficient legal basis for United Nations peacekeeping operations to engage in radio broadcasting.

11. Based on the foregoing, until such time as the consent of the State on whose territory radio broadcasting stations will be installed is obtained and appropriate legal arrangements are made, the decision to proceed with the establishment and operation of such radio stations in peacekeeping operations is not advisable.

12. However, if the consent of the State on whose territory a peacekeeping operation is deployed proves to be difficult to obtain as far as United Nations radio broadcasting is concerned and such broadcasting is deemed essential to the activities of the operation, the Organization might consider using a third country for the purpose. In that instance, the consent of the Government of the host country concerned would also be required and necessary legal arrangements would have to be made. In considering such an alternative, the political sensitivities which it may cause for the State to which the radio broadcasting would be transmitted should be taken into account.

21 December 1994

PEACEKEEPING

13. Compatibility of security issues and the mandate of peacekeeping forces — Mandate of (UNOSOM II) — Security Council resolution 897 (1994) — Licence Agreement between the United Nations and the United States

Memorandum to the Under-Secretary-General for Peacekeeping Operations

1. This is with reference to your memorandum of 31 January 1994 transmitting to us a cable sent by the Special Representative of the Secretary-General, UNOSOM II, seeking authorization to accede to a request by the [name of State] Mission in Somalia[41] to relocate to the UNOSOM compound for security reasons. It is noted that, according to the Special Representative's cable, the State concerned would need space for 20 to 25 trailers to provide housing and office space for approximately 10 staff and 16 security guards, that they would be "fundamentally self-sufficient and independent" and that "they simply want some secure space". It is also noted that on 18 February 1994 the Permanent Representative of the State concerned to the United Nations sent to you a letter on this subject by which he officially communicated the above request and provided certain details thereof. You requested our legal advice on the matter.

2. We agree with you assessment that, while the request by that State may seem to be, *prima facie*, a practical matter, it does have legal, political and financial implications which should be examined and taken into account.

3. The very first issue which has to be considered is whether the provision of security for foreign missions in Mogadishu or elsewhere in Somalia would be consistent with the UNOSOM mandate.

4. The mandate of UNOSOM II was approved by the Security Council resolution 814 (1993) of 26 March 1993 in order to create a secure environment for humanitarian relief operations in Somalia. By endorsing the recommendations contained in paragraphs 56 to 88 of the report of the Secretary-General of 3 March 1993

(x/25354), the Security Council, acting under Chapter VII of the Charter of the United Nations, entrusted UNOSOM, *inter alia*, with the following military task set forth in paragraph 57 of that report:

> "(f) *To protect, as required, the personnel, installations and equipment of the United Nations and its agencies, the International Committee of the Red Cross as well as NGOs* and to take such forceful action as may be required to neutralize armed elements that attack, or threaten to attack, such facilities and personnel, pending the establishment of a new Somali police force which can assume this responsibility." (emphasis added)

The Secretary-General was also requested, in paragraph 14 of Security Council resolution 814 (1993), to direct the Force Commander of UNOSOM II, through his Special Representative, to "assume responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia".

5. The mandate of UNOSOM II was revised by the Security Council resolution 897 (1994) of 4 February 1994, in which the Council approved the Secretary-General's recommendations for the continuation of UNOSOM II, as set out in particular in paragraph 57 of his report (S/1994/12), "with a revised mandate for the following":

> "(g) Providing protection for the personnel, installations and equipment of *United Nations and its agencies, as well as of non-governmental organizations* providing humanitarian relief and reconstruction assistance." (emphasis added)

6. Thus, while UNOSOM II has a comprehensive and far-reaching mandate, it expressly limits the task of providing protection in Somalia to the protection of the personnel, installations and equipment of the United Nations, its agencies and relevant non-governmental organizations.

7. In view of this, it is our opinion that any activity of UNOSOM forces aimed at providing protection to personnel, installations and equipment other than those indicated above may be carried out only if this activity does not interfere with the implementation of the UNOSOM mandate and does not have financial implications for the Organization. We assume that the proposed relocation of the [name of State] Mission to the territory of the UNOSOM compound, in either of the forms set out in paragraphs 9 and 10 below, would satisfy those conditions since it would not require additional measures for protecting the territory of the compound and would not lead to additional expenses for the Organization. If this assumption is incorrect, we consider that explicit authorization of the Security Council would be needed for the proposed relocation.

8. The obligations of the United Nations *à-vis* the UNOSOM compound in Mogadishu are set out in the Licence Agreement signed by the United Nations and the United States Government on 6 July 1993. That Agreement does not address the question of locating diplomatic missions of States on the territory of the compound. However, paragraph 10 of the agreement provides that the compound is "to be used in connection with the United Nations peacekeeping activities in Somalia mandated by the Security Council". Although, as indicated in paragraph 5 above, it appears that the proposed relocation would not be in contradiction with the UNOSOM mandate as established by the Security Council, we would suggest that the consent of the United States authorities to the request by the State in question should be sought,

since the licence appears to contemplate occupation of that compound only by the licensee (the United Nations). Besides, this consent is needed since the proposed relocation would involve action which may be considered as erection of "permanent structures" (digging a water well and installing a septic tank as referred to in the above letter of the Permanent Representative of the State concerned) for which purposes prior written consent of the United States is required in accordance with paragraph 4 of the License Agreement.

9. Once this consent is received, one possibility would be to conclude an agreement between the United Nations and the Mission of the State regulating various terms and conditions of its using the territory of the compound for the above purposes. Prior to drafting this agreement, all specific practical requirements and needs for the Mission (e.g., duration of the arrangement; use of various utilities, if any; identification for entry into the territory of the compound, etc.), in case it is located on the territory of the compound, should be clarified with the State in question in order to adequately address those requirements and needs in the agreement. In addition, such agreement will have to regulate a number of legal issues (e.g., indemnification in connection with possible claims of the Mission's employees or of third parties, settlement of disputes, etc.). This Office will be prepared to provide assistance in drafting the agreement, if it is decided to take this course of action.

10. Another possibility would be for the Mission of the State concerned to conclude a direct agreement with the United States concerning the use by the Mission of a part of the territory of the compound for the purposes indicated by the Ambassador of that State. If this option is acceptable to the parties concerned, the United Nations and the United States would make a simple amendment to the current Licence Agreement to the effect that a certain designated part of the compound's territory is excluded from the United Nations' licence and all other issues arising from the use of that part of the excluded territory by the Mission of the State in question would be dealt with directly in the agreement between the United States and that State. It appears that this option might be preferable since it would allow the Organization to avoid creating a precedent the implications of which are not entirely clear and also enable the Organization to avoid dealing with quite complicated legal issues arising out of this novel case: for example, the legal status of the territory occupied by the Mission of the State concerned as contrasted with that of the UNOSOM compound as a whole.

25 February 1994

14. United Nations operation in Rwanda — Mandate of United Nations Assistance Mission for Rwanda (UNAMIR) — Security Council resolutions 872 (1993), 912 (1994), 918 (1994) and 929 (1994)

Memorandum to the Assistant-Secretary-General for Peacekeeping

1. This is with reference to your note date 18 July 1994 to which was attached copy of the letter dated 15 July 1994 ("the communication") that the Charge d'affaires a.i. of the Permanent Mission of France addressed to the President of the Security Council and which has been issued as an official document of the Security Council

(S/1994/832). In this respect, you requested our views on the communication in the framework of the current mandate of UNAMIR's present and previous relevant situations.

2. By the communication, the Government of France indicated that the presence of the "President" of the "Interim Government" of Rwanda and four of his "Ministers" had been observed in Cyangugu, one of the districts within the humanitarian zone established by the French forces pursuant to Security Council resolutions 925 (1994) and 929 (1994). The position of the French Government in this respect is that no political or military activity will be tolerated in this humanitarian zone and all necessary measure will be taken to ensure compliance with the rules applicable to the area concerned. Furthermore, the French Government expressed its willingness to lend its support to any Security Council decision relating to the persons referred to above and to consider any decision in respect of which the United Nations might wish France to lend its support.

3. It is necessary to point out that, in Rwanda, two distinct operation shave been authorized by the Security Council, one being conducted by UNAMIR and the other by the temporary operation under national command and control of Member States. The mandate of UNAMIR, which was initially authorized by the Security Council resolution 872 (1993) of 5 October 1993, has been adjusted following the tragic events of 6 April 1994, when the President of Rwanda was killed in a plane crash. Pursuant to Security Council resolution 912 (1994) of 21 April 1994, the mandate of UNAMIR was adjusted as follows:

— To act as an intermediary between the parties in an attempt to secure their agreement to the cease fire;

— To assist in the resumption of humanitarian relief operations to the extent feasible;

— To monitor and report on developments in Rwanda, including the safety and security of the civilians who sought refuge with UNAMIR.

Subsequently, pursuant to Security Council resolution 918 (1994) of 17 May 1994, the above-mentioned mandate of UNAMIR was expanded:

— To contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible, of secure humanitarian areas;

— To provide security and support for the distribution of relief supplies and humanitarian relief operations.

4. Taking into account the time needed to gather the necessary resources for the effective deployment of UNAMIR for the fulfillment of the objective set out in resolution 918 (1994) as reaffirmed by the Security Council in its resolution 925 (1994), and the offer by Member States to cooperate with the Secretary-General toward the fulfillment of such objectives, the Security Council, acting under Chapter VII of the Charter of the United Nations, authorized pursuant to resolution 929 (1994) of 22 June 1994 the establishment of a temporary operation under national command and control of the Member States concerned. In accordance with paragraphs 2 and 3 of the above-mentioned resolution, the temporary operation was "aimed at contributing, in an impartial way, to the security and protection of dis-

placed persons, refugees and civilians at risk in Rwanda" and to use "all necessary means to achieve the humanitarian objects set out in paragraphs 4(a) and (b) or resolution 925 (1994)".

5. Accordingly and since France is one of the Member States conducting the above-mentioned temporary operation, we note that the position expressed by the Government of France in the communication is consistent with the relevant provisions of Security Council resolution 929 (1994).

6. As to any decision that the Security Council may wish to take in connection with the persons referred to in the communication, and should such a decision address issues relating to the maintenance of law and order, it should be borne in mind that in Rwanda a Broad-Based Government of National Unity was sworn in on 19 July 1994. The maintenance of law and order therefore rests with that Government. Accordingly, issues which might arise in connection with law and order in the case of the persons referred to in the communication will have to be addressed in consultation with the Government in place in Rwanda.

7. In the case of Somalia, which could be considered a previous relevant situation, no Government of Somalia was in existence to deal with issues relating to the maintenance of law and order. In the absence of such a governmental infrastructure, UNOSOM II was authorized pursuant to Security Council resolution 814 (1193) under Chapter VII of the Charter and placed under United Nations command and control. Subsequently, UNOSOM II was further authorized by the Security Council in its resolution 837 (1993) "to take all necessary measures against all those responsible for armed attacks … including to secure the investigation of their actions and their arrest and detention for prosecution, trial and punishment".

24 July 1994

PERSONNEL ISSUES

15. Conditions of service of police observers in the United Nations Observer Mission in El Salvador — Designation of beneficiary in case of death while in service — Question of applicability of national laws — Nature of P.2 form

Memorandum to the Chief of the Field Personnel Section, Field Operations Division, Department of Peacekeeping Operations

1. Please refer to your memorandum of 18 October 1993 on the above subject requesting our advice with regard to payment of monies due to a [name of State] Police Observer who passed away during services with the United Nations Observer Mission in El Salvador (ONUSAL). We note that, on arrival at the mission, the Police Observer filled out a designation of beneficiary form (P.2) indicating that, in case of his death, his mother should receive 75 per cent of the monies standing to his credit, and his fiancee 25 per cent. We also note that the corresponding cheques made out in the names of the above beneficiaries to be delivered to them through the Chief of the [name of State] Police Contingent in ONUSAL (as required by the

applicable rules), were returned by the authorities of the State of his nationality with the explanation that "in accordance with the State's law, when there is no legal testament, the inheritance will be divided in two: half going to the legal ascendents and the other half to the natural children. Further, according to the State's law, a United Nations document is only valid if authenticated and even then, it is not possible to recognize the P.2 form as valid as, according to article 1167 of that State's Civil Code, the person filling such a form must leave half of the monies due to him to his legal ascendents and natural children".

2. The letter of the ONUSAL Chief Administrative Officer, attached to your memorandum, states that the authorities of the State concerned object to the payments to the designated beneficiaries on two ground. First, "there is no legal testament", and the P.2 form filled out by the deceased cannot be viewed as such testament because it was not "authenticated". Second, even if the P.2 form were properly authenticated, it would have not been valid because half of the monies still "must" be left to legal ascendents and natural children.

3. United Nations rules governing the conditions of service of Police Observers in ONUSAL are contained in "Notes for the Guidance of Military Liaison Officers (MLOs)/Police Monitors on Assignment" of July 1991. Paragraph 83 of those Notes provides as follows:

"D. *Beneficiary*

"83. An MLO/Police Monitor is at liberty to name his own beneficiary, whether the latter be a recognized dependent or not. For this purpose, each MLO/Police Monitor, upon arrival at ONUSAL, is required to complete, in triplicate, a designation of beneficiary form."

Paragraph 84 of the Notes provides as follows:

"E. *Death*

"84. In the event of death in the service of the United Nations, *the award of compensation* will follow a similar procedure, but the payment will be made to the duly designated beneficiary of the MLO/Police Monitor, *subject to the requirement of the laws of the MLO/Police Monitor's own country*. If no beneficiary has been named, the payment will be made to the deceased's estate. In either case, payment will be made by the United Nations through the MLO/Police Monitor's Government" (emphasis added).

4. The two above provisions, read together, create a certain ambivalence: the first established "liberty" to name a beneficiary, while the second indicates that the payment to the beneficiary will be made "subject to the requirements" of national laws, which condition is open to different interpretations. However, the reference to the requirements of national laws in paragraph 84 of the Guidelines relates to the award of compensation (e.g., in the event of death), and not to the monies standing to the credit of a deceased at the time of death. The Guidelines therefore do not require reference to national laws in distributing monies standing to the credit of a deceased at the time of death.

5. As for the position of the concerned State's authorities, the P.2 is not and was not intended to be a testament. The purpose of this form is solely to allow the Organization to discharge its obligations *à-vis* the deceased. It is therefore within the

United Nations authority to determine whether the P.2 was filled out and signed correctly, and whether it is valid or not for intended purposes. We understand that, in case of the deceased police observer, there are no doubts as to the validity of the P.2 form.

6. In view of the foregoing, we share the opinion of the Chief Administrative Officer of ONUSAL that the monies paid by the United Nations to the Police Observer in respect of his services with the mission, and standing to his credit at the time of death, should be distributed in accordance with the P.2 form filled out specifically for this purpose. Any other action by the United Nations would constitute a breach of obligation assumed by the Organization at the commencement of the police observer's service in the mission.

5 January 1994

16. Question of whether the Department of Public Information can become a member of a national foundation

Memorandum to the Director, Media Division, Department of Public Information

1. This is in response to your memorandum of 12 November 1993 seeking our advice "on possible legal implications were the Department of Public Information to accept membership in a foundation being set up by the International Foundation for the Acquisition of Distribution Rights of Videos and Television Programmes dealing with the environment and development, in a joint enterprise with Television Environment".

2. In light of the information provided in your memorandum, we understand that the proposed foundation (the Foundation) is to be a French entity, partially financed by the French Government and governed by French law. We also have taken note of your indication that the membership of the Department of Public Information in that Foundation would be in "an advisory role only, with prospects for facilitating the distribution of video products from the Media Division but with no financial involvement". However, no information is provided as to the responsibilities that the Department would be assuming by virtue of its membership in a private non-United Nations entity. In particular, it is not clear that: (a) the Department would not be required to participate in the establishment of the Foundation, e.g., by participating in the application for incorporation under French law and by contributing to the initial capital required for the incorporation; (b) the Department would not be required to participate in the management and administration of the Foundation; and that (c) the Department would have no financial responsibility for the debts of the Foundation.

3. As the Department of Public Information is an integral part of the United Nations Secretariat, any responsibility it assumes by virtue of its membership in the Foundation also involves the Secretariat and ultimately the United Nations as a whole. From a legal point of view, therefore, the proposed membership of the Department in a private non-United Nations entity could confound the separate status and identity of the Foundation with that of the United Nations and associate the United Na-

tions with the Foundation's activities. Furthermore, the participation of the Department as a minority member in the Foundation might place it in the awkward position of appearing to endorse activities and policies that could be in conflict with those of the United Nations. We therefore advise that the Department should not become a member in the Foundation, irrespective of whether or not such membership is only in an advisory capacity.

4. While, therefore, the membership of the Department of Public Information in the Foundation would be legally unacceptable, it could, of course, enter into cooperative arrangements with the Foundation, which would outline the areas of common interest, the objectives sought by the parties and the types of corporation activities considered to be necessary and beneficial for the Department. We would be prepared to assist in reviewing the text of such cooperative arrangements between the Department and the Foundation, once that entity is established.

10 February 1994

17. Legal or contractual ties between the United Nations and individual United Nations guards — Status of United Nations Guards in connection with repatriation requests — Administrative instruction ST/AI/295

Memorandum to the Deputy Director for Humanitarian Affairs

1. This is with reference to your memorandum of 14 April 1994, in which you seek the advice of this Office concerning the nature of the legal or contractual ties between the United Nations and the individual United Nations Guards. In the memorandum you also inquire as to whether the United Nations can legally reject a general request for repatriation and whether it can reject a specific request based on the deterioration of the security situation in [name of State concerned].

Regime applicable to United Nations Guards

2. As far as the first question is concerned, it is our understanding, on the basis of information which has been provided by your Office and the Field Operation Division of the Department of Peacekeeping Operations, that basic aspects of legal relations between the United Nations and members of the United Nations Guards Contingent are regulated by a document entitled "General Conditions Governing Assignment of Members of the United Nations Guards Contingent" (hereafter the "General Conditions"). Apparently this document was issued by the Field Operations Division and was sent to Governments, together with requests that they assist in identifying suitable individuals who might be recruited as United Nations Guards.

3. In accordance with the provisions of annex II to the General Conditions, United Nations Guards are considered by the United Nations as experts on mission within the meaning of article VI of the Convention on the Privileges and immunities of the United Nations. United Nations Guards are required to sign a so-called "letter of undertaking" contained in annex II to the General Conditions. Paragraph 1 of the letter provides that a United Nations Guard undertakes to avoid any action which may adversely reflect on his/her status as a member of the United Nations Guards Contingent in the State in question.

4. We note that these terms of employment are general in that there is no reference to salary or emoluments of an individual United Nations Guard. Nor is there any provision for the duration of the appointment, or the way in which it can be terminated by the Organization. It should also be noted that the General Conditions do not contain provisions specifying conditions under which an individual United Nations Guard can terminate his/her assignment before expiration of its term or the conditions under which he can ask for repatriation.

5. We note that the policies for obtaining the services of individuals (who are not staff) are prescribed in Secretary-General's bulletin ST/SGB/177 of 19 November 1982. That bulletin states that such individuals must be contracted with in accordance with administrative instruction ST/AI/295. That instruction does not contain any provision on repatriation, but it does contain a provision for termination of such agreements, which reads as follows:

> "27. The special service agreement of an individual contractor may be terminated either by the individual or by the United Nations before the expiry date of the agreement by the party wishing to terminate the agreement giving notice in writing to the other party. The period of notice shall be five days in the case of agreements for a total period of less than two months and fourteen days in the case of agreements for a longer period."

6. The Chief, Emergency Programme for [State concerned], Department of Humanitarian Affairs, in his memorandum dated 15 April 1994 on the question of the status of United Nations Guards, a copy of which was forwarded to this Office, states that, except for the "letter of undertaking, the Guards do not sign any other "biding" document, such as a special service agreement (SSA). In this connection this Office holds the view that if, as stated above, no SSA or other individual contractual document is signed by a United Nations Guard then in the absence of such provisions in the General Conditions governing the appointment of United Nations Guards the procedures for advance termination of assignments of United Nations Guards and subsequent repatriation to their home countries should be those applied in standard SSAs regulating contractual arrangements between the United Nations and individuals who are not staff members, including experts on mission for the Organization.

General request for repatriation

7. Under paragraph 27 of ST/AI/295, referred to above, a United Nations Guard could give notice that he wished to terminate his appointment. He would then be entitled to leave at the expiration of the notice period. The instruction provides that an assignment may be terminated by either party before the expiry date by giving notice in writing to the other party. The period of notice shall be five days in the case of assignments for period of less than two months and fourteen days in the case of assignments for a longer period.

8. Similarly, if a United Nations Guard refuses to carry out assigned duties the United Nations can terminate his/her appointment.

Specific request for repatriation based on the deterioration of the security situation

9. With reference to your second question concerning the situation should a United Nations Guard request repatriation specifically on the grounds of fear for his safety, we would like to note that ST/AI/295 does not have provisions dealing with

such requests. As stated above, a United Nations Guard can always terminate his/her contract in accordance with the conditions specified in paragraph 27 of ST/AI/295. However, this Office is of the view that, if there is a reasonable basis for the fear, the Organization, as a good employer, would waive the time limit.

10. At the same time, we would like to point out that the question of whether the situation in a country, or in a portion of a country, is safe cannot be determined by individual employees of the Organization. Decisions concerning security and safety of employees of the Organization, including those related to relocation, suspension of activities and evacuation (phases 2, 3 and 4 of the security plan) should be taken by the responsible United Nations officials in accordance with the respective provisions of the United Nations Security Handbook.

18 April 1994

18. Status of air crew and support personnel provided by a Member State to the United Nations High Commissioner for Refugees airlift for Rwandan refugees — Section 22 of the Convention on the Privileges and Immunities of the United Nations

Facsimile to the Acting Chief, Personnel Administration Section, United Nations High Commissioner for Refugees (UNHCR)

1. This is with reference to your memorandum dated 27 July 1994 requesting our advice on the status to be accorded to the air crew and support personnel to be provided by the Government of a Member State to the UNHCR airlift for Rwandan refugees.

2. The status which seems appropriate to accord to the personnel concerned is that of experts on mission for the United Nations within the meaning of section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946. Zaire and Rwanda, which are the States on whose territories the personnel concerned are to perform activities for UNHCR are both parties to the above-mentioned Convention.

3. As experts on mission, the personnel concerned should therefore be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their mission, including the time spent on journeys with their mission. Furthermore, they should be issued a United Nations travel certification pursuant to section 26 of the above-mentioned Convention.

4. I wish to point out that as experts on mission, the personnel concerned shall remain the responsibility of the Government of the State concerned and shall not be considered officials of the United Nations. The Government of that State should ensure that each member of the air crew is covered by adequate medical and life insurance, as well as insurance coverage for service-incurred illness, injury, disability or death. The United Nations does not accept any liability for claims for compensation in respect of illness, injury or death arising out of the activities performed by the personnel concerned. The status accorded to these personnel does not engage the financial responsibility of the United Nations. The United Nations will, however, provide these personnel with the assistance normally accorded to experts on mission.

5. I suggest that UNHCR address a letter to the Government of the State concerned confirming the status of the personnel concerned and outlining the terms and conditions described above.

28 July 1994

19. Status of military officers on loan from Governments at no cost to the United Nations — General Assembly's role and consideration of the status of a new category of personnel prior to the issuance of an administrative instruction

Memorandum to the Director of Recruitment and Placement, Office of Human Resources and Management

1. This is further to your memorandum of 23 June 1994. In your memorandum you had indicated that Office of Human Resources and Management would establish an inter-departmental working group to examine issues concerning the status of military officers who serve at Headquarters on loan from their Governments at no cost to the United Nations. I understand that the working group met several times in the last two months on the above issue and that the advice of this Office has been requested in respect, in particular, to the status of those individuals with the Organization which is a major concern, particularly as the individuals in question are often required to undertake official travel.

2. Following a thorough review of, and several consultations on, this matter by this Office, and having regard to the professional and specialized nature of the functions these military officers perform for the United Nations, this Office considers that the most suitable status for their case would be that of "experts on mission" within the meaning of article VI, section 22, of the Convention of the Privileges and Immunities of the United Nations.

3. It has further been deemed necessary that the terms and conditions governing the deployment of the military officers in question would be included in bilateral agreements/arrangements entered into between the United Nations and the Member States contributing such personnel. The preparation of such agreements/arrangements would have to be undertaken by the Office of Legal Affairs.

4. Prior to considering the specific terms and conditions that would need to be included in the aforementioned agreements/arrangements, the following issues still require clarification:

Visa status

5. The United States authorities should be advised that the Organization contemplates granting to those individuals the status of "expert on mission" during the period of their service with the United Nations. This is necessary to ensure that the G-2 visa granted to those individuals by the United States authorities does not conflict with the status of "expert on mission".

Service-incurred death and disability benefits

6. A decision should be reached in respect of the coverage of those individuals for service-incurred death and disability benefits during their period of service with the United Nations. If it is contemplated that such coverage would not be provided by the Member States contributing such personnel, it should be noted that coverage of these individuals by Appendix D to the Staff Rules would have significant financial implications for the Organization and would therefore need to be cleared by the Controller's Office.

Health insurance coverage

7. Another issue that needs to be decided upon concerns health insurance coverage for these individuals. In view of the fact that they are not staff members of the United Nations, such coverage cannot be provided or subsidized by the United Nations. Such coverage will have to be provided by the Member States contributing such personnel to the United Nations. In this respect, however, we understand from discussions held during the meetings of the working group that certain Member States have indicated that it would be difficult for them to meet the high costs of health insurance coverage in the United States. Another alternative would be that such coverage would be obtained directly by the individuals themselves at full premium. In view of the high costs involved, we understand that the Insurance Section indicated that the Van Breda Emergency Insurance might be a suitable solution of the health insurance issue, as its premium is very low (some $20 per month). This policy, however, is limited to emergency situations and cannot be used for ongoing medical problems.

8. Once a decision has been taken on the issues indicated above, it would seem advisable that a report should be submitted to the General Assembly which will include specific proposals concerning the status of those individuals. We consider that the preparation of such a report would have be coordinated with, *inter alia*, this Office.

9. I understand that the Office of Human Resources and Management considers preparing and issuing a new administrative instruction pertaining to this new category of personnel. In our view, the regularization of the status of a new category of personnel cannot properly be effected by means of an administrative instruction, but must first be approved by the General Assembly. Accordingly, the issuance of an administrative instruction must follow the Assembly's consideration of the report indicated in paragraph 8 above and approval of the recommendation of the Secretary-General contained therein.

24 October 1994

PRIVILEGES AND IMMUNITIES

20. Applicability of labour law of a receiving State to labour relations between members of missions and officials of international organizations and their private household personnel — Articles 33(2), (4) and 37(4) of the 1961 Vienna Convention on Diplomatic Relations.

Cable to the Senior Legal Officer, Legal Liaison Office, Geneva

This is in response to your facsimile of 22 December 1993 to which was attached for our comments a letter from the [name of State] Mission, dated 17 December 1993, concerning private servants, who are not nationals of or permanently resident in [name of State], of diplomats and officials of international organizations entitled to diplomatic privileges and immunities.

We note that the receiving State is envisaging making applicable its law to labour relations between members of missions and concerned officials of international organizations, and their private household personnel. In this context they intended to subject the granting of authorizations of private servants to enter into [name of State] to the conclusion by them of work contracts with their employers.

These matters should be considered in the light of the pertinent provisions of the 1961 Vienna Convention on Diplomatic Relations.[42] According to article 37, paragraph 4 of the Vienna Convention, "Private servants of the Mission shall, if they are not nationals or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. The Convention does not foresee for them any other privileges, immunities or exemptions. It unequivocally stipulates that such additional privileges and immunities may be enjoyed by private servants "only to the extent admitted by the receiving State."

In the light of these provisions, the receiving State in this case would not seem to be in contravention of the Vienna Convention in generally applying its domestic law to the labour relations between diplomats and concerned officials of international organizations and their private servants. Accordingly, it would seem to be entitled to expect that persons concerned regulate this type of their relations on the basis of a work contract under the State's law.

In this connection, it is also to be recalled that, pursuant to paragraph 2 of article 33, private servants who are not nationals of or permanently resident in the receiving State and who are in the sole employ of the persons concerned shall be exempt from social security provisions which may be in force in the State. This exemption is applicable on condition that private servants are covered by the social security provisions of the sending State or a third State. It should, however, be borne in mind that under paragraph 4 of article 33, the exemption in questions shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

In the context of the matter under consideration, an important principle, codified in paragraph 4 of article 37 of the Vienna Convention, should be stressed, that in exercising its jurisdiction over foreign servants, the authorities of the receiving State must do this "in such a manner as not to interfere unduly with the performance of the functions of the mission."

We are of the view that, in relation to this matter, any measure of a punitive character against diplomats and/or their foreign private servants would not be consonant with either the spirit or the letter of the Vienna Convention. Attempts to enforce the labour law of the receiving State in relation to this matter would not be consistent, in particular, with diplomatic immunity from criminal, civil and administrative jurisdiction of the receiving State and other corresponding provisions set out in the Vienna Convention. Therefore, the labour law of the receiving State should be made applicable to this type of relations between persons concerned in such a manner which would not infringe upon the jurisdictional diplomatic immunities or otherwise.

24 January 1994

21. Question of whether the staff of permanent missions are obliged to reside in Switzerland — Section 11 of the 1946 Agreement with the Swiss Federal Council on Privileges and Immunities of the United Nations — Article 7 of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character

Memorandum to the Senior Legal Officer, Legal Liaison Office, Geneva

1. This is with reference to your memorandum of 4 January 1994, with attachments, requesting our observations on the question as to whether the request by the Swiss authorities for mission personnel to reside in Switzerland is in violation of the Vienna Convention on Diplomatic Relations.[43] Our observations on this matter are set out as follows:

2. None of the provisions of the applicable international agreements governing the legal status of diplomatic personnel of missions accredited to the United Nations Office at Geneva, namely, the 1946 Agreement with the Swiss Federal Council on Privileges and Immunities of the United Nations and the 1961 Vienna Convention on Diplomatic Relations, seems to unequivocally require that diplomatic personnel reside permanently or continuously in that country during their assignment to the United Nations Office at Geneva.

3. The 1946 Agreement, generally based on the corresponding provisions of the 1946 Convention on the Privileges and Immunities of the United Nations, does not foresee the institution of "permanent" or "resident" representatives. It speaks in general terms of "the representatives of Members of the United Nations" who should enjoy certain privileges and immunities, mainly functional, "while exercising their functions and during their journey to and from the place of meeting".

4. The term "permanent representative" became the prevailing pattern in the statutory law and practice of international organizations following the adoption by the General Assembly, on 3 December 1948, of resolution 257 A(III). The Headquarters Agreement of the United Nations with the United States, the Headquarters Agreement of the International Atomic Energy Agency with Austria and the Headquarters Agreement of the Food and Agriculture Organization of the United Nations with Italy use the term "resident representative".

5. It maybe be noted that the 1958 Agreement between the United Nations and Ethiopia regarding the Headquarters of the United Nations Economic Commission for Africa expressly provides, in article V, for a clear distinction between the "representatives of Governments, participating in the work of the ECA" and the "resident representatives of Governments to the ECA". The term "resident representative" could be interpreted to mean that such representatives would normally reside in the host country during their official accreditation to the Organization concerned.

6. One provision reflecting the factor of residence is, however, incorporated in the 1946 Agreement with Switzerland in the context of the question of taxation. In particular, section 11 of that Agreement stipulates as follows:

> "If the incidence of any form of taxation *depends upon residence* in Switzerland, periods during which the representatives of Members of the United Nations on its principal subsidiary organs and at conferences convened by the United Nations are present in Switzerland for the discharge of their duties shall not be considered as periods of *residence*" (emphasis added).

Nevertheless, no matter how broad an interpretation one could give to this provision, it would not seem to allow a conclusion that "the representative of Members" must reside only in Switzerland during their assignment to the United Nations Office at Geneva.

7. Likewise, the Vienna Convention does not directly address the issue of residence of diplomatic agents. It appears to be based on a general assumption that diplomatic agents would normally reside in the country of accreditation out of practical necessity. However, it does not expressly set out such a rule. Our analysis of the legislative history of the Vienna Convention leads to the conclusion that its drafters did not intend to regulate this issue in the Convention.

8. It would seem, however, important to note that the Vienna Convention specifically regulates the case of accreditation of a head of mission and the assignment of a member of the diplomatic staff "to more than one State, unless there is express objection by any of the receiving States".[44] Obviously, in such situations, a request by one of the States of dual accreditation that diplomats of the sending State should reside only in that State of accreditation would not be fully consonant with the intent of this article, inasmuch as it would not allow them to properly discharge their functions in another State of accreditation.

9. A somewhat analogous approach has been adopted in the 1975 Vienna Convention on the Representation of States in Their Relations With International Organizations of a Universal Character.[45] Although that Convention is not yet in force, its provisions are of interest in the context of this matter, since they represent an attempt to codify customary rules and practices in the area of representation of States in their relations with any international organization of a universal character. The question of multiple accreditation or appointment is addressed in article 7 of the Convention, as follows:

"1. The sending State may accredit the same person as head of mission to two or more international organizations or appoint a head of mission as a member of the diplomatic staff of another of its missions.

"2. The sending State may accredit a member of the diplomatic staff of the mission as head of mission to other international organizations or appoint a member of the staff of the mission as a member of the staff of another of its missions.

"3. Two or more States may accredit the same person as head of mission to the same international organization."

10. In the context of the matter under consideration, an interesting fact could be recalled which was reflected in the 1967 study of the United Nations Secretariat for the International Law Commission on the practice of the United Nations, the specialized agencies and the IAEA concerning their status, privileges and immunities.[46] The study mentioned that at that time "all permanent missions at the [United Nations] Geneva office [were] located in Geneva, with the exception of two in Bern and *one in Paris*" (emphasis added). This fact was also reproduced in paragraph 3, on page 146, of the third report of the Special Rapporteur of the International Law Commission on relations between States and intergovernmental organzations[47] setting out draft articles, with commentaries, of the above-referenced 1975 Vienna Convention. Whether or not the current situation in this regard has changed, the fact remains, at least in one case, that the premises of a permanent mission were not located in Switzerland and apparently diplomatic personnel of that mission although being assigned to the United Nations Office at Geneva were not residing in Switzerland.

11. According to information available in our files, Switzerland did not object in the past to the practice of diplomats accredited to the United Nations Office at Geneva residing in a neighboring State. If this is the case and in view of the absence of the clear-cut provisions in the applicable agreements to the contrary, one could argue as to whether a customary rule has not been established in this area of relations.

12. In the light of the foregoing observations, it is our view that it would not be appropriate for the receiving State to categorically request that diplomatic personnel of missions reside within the boundaries of that State.

7 February 1994

22. Dual Registration of Aircraft — Article 18 of the Convention on International Civil Aviation (Chicago Convention) — Exemption for United Nations aircraft from the compulsory requirement by one State of registration therein of aircraft validly registered in another State — UNICEF Standard Basic Cooperation Agreement — Agreement between the United Nations and a Member State for the establishment of UNEP headquarters

Memorandum to a United Nations Development Programme Resident Representative

1. This is in reference to our conversation of 8 February 1994 and your memorandum of 7 February 1994 concerning the registration of aircraft operated in the State in question.

2. As I indicated, it is quite clear from the [State's] Civil Aviation (Air Navigation) Regulations, 1979, that fresh registration in that State of foreign-registered aircraft is not permitted. In that respect, part II, paragraph 4(2), of the Regulations reads:

> "…an aircraft *shall not be registered* or continue to be registered in [name of State] if it appears…that —
>
> "(a) the aircraft *is registered* outside [the State]" (emphasis added).

This provision is in conformity with the Convention on International Civil Aviation (Chicago Convention), which prohibits dual registration of aircraft (see article 18).

3. We understand, however, that the [State's] authorities are considering requiring foreign-registered aircraft operating in that State to change their foreign registration. Since the aircraft have the nationality of the State of their registration, such change would also mean a change in nationality to that of the State. While the Chicago Convention provides that the registration of an aircraft may be changed from one State to another (see article 13), it does not make provision for such change to be imposed as a compulsory requirement by one State in respect to aircraft validly registered in another State.

4. The proposed requirement for change in registration is currently not provided for under the [State's] Regulations. Since the [State's] Regulations are consistent with the provisions of the Chicago Convention, we assume that the proposed requirement will be effected through a change in existing legislation and coordinated with ICAO.

5. In the event that the State decides to amend its legislation to require aircraft operating in that State to change their nationality through a change of registration, you should request an exemption from such a requirement on the following grounds:

(*a*) Aircraft chartered by the United Nations are not operated in that State for any commercial gain or purpose. They are being used for specific purposes in connection with the mandate of the United Nations under Security Council resolutions for peacekeeping and for provisions of humanitarian assistance. The

fact that such aircraft are based in the State in the course of performing those services does not in any way imply an intention to remain there permanently or establish residence or domicile, which alone would justify a requirement to change their nationality

(*b*) Under the Standard Basic Cooperation Agreement between the United Nations Children's Fund and the Government of the State, which was signed in January 1993, the Government has undertaken to facilitate the use and operation of aircraft by UNICEF in that State and not to impose any undue restrictions on the acquisition, use or maintenance of such aircraft for its programme activities (see article XIX). Article XIX reads:

> "The Government shall grant UNICEF necessary permits or licenses for, and shall not impose undue restrictions on, the acquisition or use and maintenance by UNICEF of civil aeroplanes and other craft required for programme activities under the present Agreement."

You should urge that the Government extend to the United Nations and its other agencies the same privilege,

(*c*) The United Nations has instituted procedures to ensure that the aircraft and operators used for its peacekeeping and humanitarian operations comply with international aviation requirements, and in particular, the provisions of the Chicago Convention. In this connection, we attach hereto a copy of the model aircraft charter agreement which is used by the United Nations for the provision of air transportation services for peacekeeping operations. On the basis that the aircraft meets all international civil aviation requirements, the State in questions, as a Contracting State to the Chicago Convention, is required to accord valid certifications reciprocity. This would only entail establishing a procedure for verification and validation of current aircraft registration, operation and airworthiness certificates. The United Nations should be able to assist the authorities in this exercise by requesting its operators to cooperate,

(*d*) You mentioned on the phone that the United Nations could also seek exemption from registration fees, should the [State] authorities insist on requiring change of registration of foreign registration aircraft. We believe this is possible and you may in fact rely on provisions in the Agreement concluded between the United Nations and the State for establishment of UNEP headquarters. That State has undertaken section 17(c) of the Agreement to exempt UNEP from all taxes, "recording fees, and documentary taxes". In section 45 of the Agreement, the Government has agreed to apply the Agreement, *mutatis mutandis*, to the other offices of the United Nations.

…

10 February 1994

23. Legal basis for not explicitly accepting in United Nations contracts a reference to national law as the proper law in the settlement of disputes — Section 29(A) of the Convention on the Privileges and Immunities of the United Nations

Facsimile to a Legal Officer from the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

The legal basis for not explicitly accepting in United Nations contracts a reference to national law as the proper law in the settlement of disputes stems from the immunity of the United Nations from every form of legal process under section 2 of the Convention of the Privileges and Immunities of the United Nations (the General Convention). Section 29(A) of the General Convention further provides that the United Nations shall nevertheless make provisions for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party. As a matter of policy and absent another practical alternative to judicial proceedings, the United Nations offers arbitration to its contractors, normally under the auspices of the International Chamber of Commerce or the American Arbitration Association.

On 15 December 1976, the General Assembly adopted resolution 31/98, by which it recommended "the use of the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) in the settlement of disputes arising in the context of international commercial relations, particularly by reference to the arbitration rules in commercial contracts" and requested "the Secretary-General to arrange for the widest possible distribution of the arbitration rules".

Following the adoption of that resolution, it has been the consistent policy of the Organization to propose the UNCITRAL arbitration rules for insertion into contractual instruments to govern arbitration of claims with contractors. Under article 33(1) of the UNCITRAL rules, in the absence of an agreed choice of law by the parties, the arbitral tribunal is to apply "the law determined by the conflict of laws rules which it considers applicable". In the case of leases which concern real property, the *lex situs* governs.

The United Nations consistently refuses to include a choice of law clause in its contracts because agreement on such a choice is often difficult to achieve and even where this is possible, the choice of the applicable law could be construed as a waiver of the immunity of the United Nations from the jurisdiction of the courts, since national laws regulate, *inter alia*, arbitral proceedings and provide for interim measures and regulate execution of awards, in addition to making provisions for the substantive rules.

27 April 1994

24. Question of whether the United Nations should be held responsible for violations of the Convention on International Trade in Endangered Species of Wild Fauna and Flora committed by servicemen of UNOSOM II

Memorandum to the Chief of Staff

I refer to your note of 20 April 1994 concerning the allegations of violations of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) [48] contained in a letter of 23 February 1994. This letter raises a number of legal issues, our views on which are set out below:

…

2. Pursuant to article VIII, paragraph 1, of the Convention,

> "The parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in violation thereof. These shall include measures:

(*a*) To penalize trade in, or possession of, such specimens, or both; and

(*b*) To provide for the confiscation or return to the State of export such specimens."

The Convention defines trade as "export, re-export, import and introduction from the sea". Based on the information provided, the alleged actions of the servicemen are clearly in violation of the terms of the Convention and, as such, the troop-contributing Governments concerned have an obligation to take preventive and corrective measures against the import of the protected species into their territory.

3. It was suggested that the alleged violations may be considered an abuse of United Nations privileges and immunities. In the absence of a status-of-forces agreement in the context of UNOSOM II, legal arrangements that would regulate the status of the troops and their privileges and immunities might be contained in agreements concluded between the United Nations and troop-contributing countries. If such agreements do exist, military personnel would enjoy immunity from the criminal jurisdiction of the State in which they serve but remain subject to the laws and jurisdiction of their own State. Since the Convention places the responsibility for enforcing its provisions on the States parties and since the troop-contributing States retain jurisdiction over the criminal acts of their military personnel, the responsibility for enforcing the provisions of the Convention rests with those troop-contributing States which are parties to the Convention. As States parties to the Convention, if they fulfill their obligations to prevent and punish trade in endangered species of wild fauna and flora upon a determination that their respective nationals have violated or are violating the provisions of the Convention, no abuse of privileges and immunities will arise. The questions remains, however, whether the acts alleged in this instance constitute criminal or civil offenses.

4. There was also a concern that if the United Nations fails to take preventive or corrective measures it may be held responsible for the actions of the servicemen. Although UNOSOM II may be the effective authority in Somalia, neither UNOSOM II nor the United Nations have any obligations under the Convention and therefore cannot be held responsible for the violation of its provisions.

5. While the United Nations may appropriately provide information concerning the prohibitions and obligations contained in the Convention to the various peacekeeping contingents and troop-contributing countries, no further action by the United Nations is required.

28 April 1994

25. Federal excise tax on vaccines — Question of whether the United Nations is exempt from paying such tax — Article II, sections 7 and 8, of the Convention on the Privileges and Immunities of the United Nations

Memorandum to the Chief, Headquarters and Regional Offices, Procurement Section, Purchase and Transportation, Unit

I refer to your memorandum of 4 May 1994 concerning the above-captioned matter.

1. Based on the information provided, the federal vaccine compensation tax is an excise tax that is levied on the manufacturer, not on the purchaser, but is passed on to the purchaser upon sale of the product and is individually shown in the invoice.

2. To the extent that the federal vaccine compensation tax is not a direct tax, the Organization is not entitled to the automatic exemption provided under section 7 of article II of the Convention on the Privileges and Immunities of the United Nations.

3. The federal vaccine compensation tax is, however, an excise tax which is subject to the provisions of section 8 of the Convention on the Privileges and Immunities of the United Nations. Section 8 refers specifically to exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid. Section 8 provides as follows:

> "While the United Nations will *not, as a general rule, claim exemption* from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which duties and taxes have been charged or are chargeable, Members will, *whenever possible*, make appropriate administrative arrangements from the remission or return of the amount of duty or tax" (emphasis added).

Section 8 of the Convention, therefore, also does not accord to the United Nations an automatic exemption. However, the Organization is entitled to request that the United States Government make administrative arrangements for the remission or return of the excise tax if an important purchase for official use is made.

4. It has been a consistent position of the Organization that a purchase constitutes an "important purchase" when (a) the amount of tax and the proportion that mount bears to the total purchase price is sufficient to consider the tax as an undue

burden upon the Organization or (b) the purchases occur on a recurring basis.

5. In this regard, we note that the United States regulations specifically exclude normally tax-exempt legal entities such as state and local governments and non-profit educational organizations from tax exemption. [Name of laboratory], may be advised that the regulations do not exclude normally tax-exempt international organizations from tax exemption.

6. Although the federal vaccine compensation tax is an excise tax and falls clearly within section 8 of the Convention, as explained above, that section merely entitles the Organization to request the remission or return of excise tax from the United States Government. Accordingly, the Purchase and Transportation Unit should seek to implement section 8 either by use of an appropriately drafted federal excise tax exemption certificate or by appropriate representations to the United States Government.

9 May 1994

26. Landing and parking fees levied on the United Nations — Sections 7(a) and 34 of the Convention on the Privileges and Immunities of the United Nations — Article 105 of the Charter of the United Nations

Letter to the Minister of Foreign Affairs and International Cooperation of a Member State

The Secretary-General of the United Nations presents his compliments to the Minister for Foreign Affairs and International Cooperation of [name of State] and has the honour to refer to the Ministry's note verbale dated 15 June 1994 concerning landing and parking fees and associated charges levied on the United Nations in connection with the use of the airport facilities by UNOSOM II.

The Secretary-General has taken due note of the position of the Government of [name of State] as outlined in the above-mentioned note verbale, according to which landing and parking fees are considered to be services rendered and not direct taxes from which the United Nations would be exempt under the Convention on the Privileges and Immunities of the United Nations of 1946 (the "Convention").

In this respect, the Secretary-General wishes to reiterate the position of the United Nations as far as charges such as landing and parking fees are concerned, and thereby clarify the fiscal regime to which the Organization is entitled.

The United Nations has consistently taken the position that landing and parking fees are direct taxes from which the Organization is exempt pursuant to the provisions of section 7(a) of the Convention, to which [name of State] is a party. This position is as set out in the study prepared in 1967 by the Secretariat on the practice of the United Nations, the Specialized agencies and the International Atomic Energy Agency (*Yearbook of the International Law Commission*, 1967, vol. II, document A/CN14/L.118 and Add. 1 and 2). Under that study, landing and parking fees are considered as being imposed for the mere fact of calling or stopping at an airport. Therefore, they would not be charges for public utility services from which the United Nations would not claim exemption pursuant to the same section 7(a) of the Convention.

The United Nations position is based on the fundamental principle set out in Article 105, paragraph I, of the Charter of the United Nations which provides that: "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes." This principle has been further elaborated in the Convention. Sections 7 and 8 of the Convention, which regulate the fiscal regime to which the United Nations and its subsidiary organs such as UNOSOM II are entitled, have consistently been made applicable. Section 7(a) of the Convention, which is relevant to the charges under consideration, provides that the United Nations, its assets, income and other property shall be "exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services".

While landing and parking fees normally fall within the category of "direct taxes", the question arises as to whether associated charges thereto concerning the services described in the Ministry's note verbale are "no more than charges for public utility services". The latter expression has been interpreted in the enclosed study as having "a restricted connotation applying to particular supplies or services rendered by a Government or a corporation under Government regulation for which charges are made at a fixed rate according to the amount of supplies furnished or services rendered". While the United Nations will pay charges which relate to actual services rendered, such services must, as indicated in the study, be services which can be specifically identified, described and itemized.

The United Nations' right to exemption from direct taxes is not contingent on the domestic laws or regulations but derives from the international obligations States have assumed under the Convention. In this respect, it should be pointed out that by virtue of section 34 of the Convention, the Government of [name of State] has undertaken to be "in a position under its own law to give effect to the terms of this Convention". Consequently, in the event of a conflict between domestic law and the Convention, the Convention must prevail.

Furthermore, it is necessary to recall that in order to properly regulate the presence of UNOSOM II and its personnel in [name of State], the Secretary-General initiated an exchange of letters to constitute an agreement between the United Nations and the Government of [the State concerned]. In the Secretary-General's letter dated 8 February 1994, to which no reply has yet been received, the privileges and immunities necessary to facilitate the tasks of UNOSOM II are set forth. Such privileges and immunities which include "exemption from all direct taxes, import and export duties, registration fees and charges on its personnel, property, supplies, equipment, spare parts and means of transports" are consistent with the provisions of the Convention.

In light of the foregoing clarifications, the Secretary-General trusts that the Government of [name of State] will reconsider its position and therefore exempt UNOSOM II from charges such as landing and parking fees and associated services which do not constitute charges for public utility services. The Secretary-General is prepared to examine the charges which are presented with a view to determining which of them constitute charges for public utility services in order to reach a final settlement of pending claims…

17 June 1994

27. Exemption from direct taxation of the United Nations — Nature of royalty fees — Incompatibility of measures increasing the financial burdens of the Organization with the Convention on the Privileges and Immunities of the United Nations

Memorandum to the Movement Officer, Movement Control Centre, Logistics and Communications Service, Department of Peacekeeping Operations

I refer to your memorandum of 27 July 1994 concerning a 15 percent royalty payment claimed by authorities in a Member State against the total price of a contract between the United Nations and — Airlines. Please advise the Movement Control Centre to inform the competent local authorities in that State of the following:

1. Pursuant to section 7(a) of the Convention on the Privileges and Immunities of the United Nations, to which the State became a party effective 13 January 1978, "the United Nations, its assets, income and other property shall be exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services".

2. Based on the information provided, the royalty fee is to be assessed against the actual contract price and not against the fuel, handling, landing or parking charges. To the extent that the royalty fee in question is not a charge for public utility services such as fuel, handling, landing or parking charges, the royalty fee constitutes a direct tax within the meaning of section 7(a) of the Convention on the Privileges and Immunities of the United Nations. Accordingly, the United Nations contract with the Airlines is automatically exempt from such a fee.

3. Under section 34 of the Convention on the Privileges and Immunities of the United Nations, the State concerned has an obligation to be "in a position under its own law to give effect to the terms of this Convention".

4. Furthermore, any interpretation of the provisions of the Convention on the Privileges and Immunities of the United Nations must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfillment of its purposes. Measures which might, *inter alia*, increase the financial or other burdens of the Organization have to be viewed as being inconsistent with this provision.

3 August 1994

28. Exemption of military component of United Nations Peacekeeping Force in Cyprus from registration fees and road tax — Scope of the expression "members of the Force" — Exchange of letters of 31 March 1964 between the United Nations and the Government of Cyprus

Memorandum to the Acting Director, Asia and Middle East Division, Department of Peacekeeping Operations

1. This is with reference to the letter dated 29 July 1994, with attachments, that the Military Adviser of the United Kingdom Mission addressed to you in connection with the subject matter. Copy of this letter and attachments thereto has been forwarded to my attention.

2. I understand that, unlike members of the civilian component of UNFICYP, members of the military component, with the exception of the Force Commander and Chief of Staff, are required to pay registration fees and road tax for their cars. …

3. In this respect, I wish to confirm that as indicated by the Senior Legal Adviser who reviewed the matter in the field, members of the military component of the United Nations Peacekeeping Force in Cyprus are entitled to the exemption from registration fees and road tax in accordance with the provisions of article 26 of the Agreement concluded by exchange of letters dated 21 March 1964 between the United Nations and the Government of Cyprus on the status of UNFICYP (the Agreement). Article 26 of the Agreement provides as follows: "Members of the Force shall be exempt from taxation on the pay and emoluments received from their national Governments or from the United Nations. They shall be exempt from all other direct taxes except municipal rates for services enjoyed, and from all registration fees, and charges." It is also necessary to point out that the expression "members of the Force" as referred to in the above-mentioned provisions is defined in article 1 of the Agreement to mean "*any person, belonging to the military service a State*, who is serving under the Commander of the United Nations Force *and to any civilian* placed under the Commander by the State to which such civilian belongs" (emphasis added).

4. In light of the above, no distinction should apply between members of the civilian and military components of UNFICYP as far as the exemption provided in article 26 of the Agreement is concerned.

19 September 1994

29. Status of UNICEF Goodwill Ambassadors — Entitlement to privileges and immunities of the United Nations

Memorandum to the Chief, Public Advocacy Unit, Department of Public Affairs, UNICEF

1. This refers to your telephone conversation with a member of this Office, of 11 October 1994, in which you explained that UNICEF wishes to appoint a Goodwill Ambassador who is also an actual member of the European Parliament.

2. On the basis of the records available to us, it appears that in the past, candidates for designation as UNICEF Goodwill Ambassadors have been selected on the basis of their distinguished position in society and willingness to lend their wide and acknowledged international prestige and good name to the cause and purpose of UNICEF. With respect to their status, the Goodwill Ambassadors are not considered staff members of the United Nations and are therefore not subject to the Pension Fund Regulations or the Staff Assessment or the Staff Regulations and Rules. Accordingly, Goodwill Ambassadors cannot be granted a United Nations "letter of appointment". However, a letter of designation is issued by the Executive Director of UNICEF, setting out briefly the duties of the Goodwill Ambassador, as well as the privileges and immunities, exemptions and facilities to be accorded to them. The letter from the Executive Director of UNICEF to designate the Goodwill Ambassador is usually submitted to this Office for review and clearance.

3. It should be noted that Goodwill Ambassadors, when performing functions in their official capacity, are entitled to the privileges and immunities set out in article VI, sections 22 and 23, and article VII, section 26, of the Convention on the Privileges and Immunities of the United Nations ("General Convention"), as experts on mission. In addition, Appendix D to the Staff Regulations is applicable to experts on mission in the event of injury, illness or death. Therefore, even though Goodwill Ambassadors are not staff members and should not be subject to the Staff Rules and Regulations, as we pointed out in the above paragraph, they are covered, while working for UNICEF, by these provisions of Appendix D.

4. We also point out that Goodwill Ambassadors are not paid a salary (a symbolic payment of one dollar per year), although they may be given travel and per diem allowances when they are travelling on UNICEF business. They should be granted a certificate that they are travelling on the business of the United Nations, in accordance with article VII, section 26, of the General Convention. Such certificate cannot be considered as a laissez-passer, which is exclusively granted to United Nations officials (article VII, section 24, of the General Convention). Nevertheless, such a certificate will allow the Goodwill Ambassador to travel with similar facilities to those accorded to holders of United Nations laissez-passer.

5. Although a Goodwill Ambassador cannot be considered a staff member, as we pointed out in paragraph 2 above, in light of the association created between such person and UNICEF by designating her/him as Goodwill Ambassador, and according such person certain privileges, immunities and facilities, the Goodwill Ambassador should, for all intents and purposes, be assimilated to an international civil servant. In this respect, and according to the 1954 "Report on Standards of Conduct in the International Civil Service" from the International Civil Service Advisory Board, international civil servants should be politically impartial, as stated in its paragraph 33:

> "In view of the independence and impartiality required by their status, it is an essential principle that international civil servants, while retaining their right to vote, should refrain from political activities."

Moreover, taking the examples from the same report, paragraph 34 establishes that "[Similar], public support of a political party by speeches, statements to the press, or written articles, is inadmissible"; and paragraph 36 says that "[w]ithin the broad field of political and public affairs, it is not sufficient to abstain from activities in the cause of a particular party. Public participation in any matters of national or international controversy must be ruled out by the staff member's code of conduct."

7. In the circumstances, therefore, we are of the view that it would not be advisable to designate an active member of a political party, who is also elected to Parliament, as a UNICEF Goodwill Ambassador.

8. We understand that if not designated as UNICEF Goodwill Ambassador, there are suggestions that that person would be considered for designation as "Honorary UNICEF Representative". It should be noted that the title "UNICEF Representative" is already used in respect to staff members appointed as "Representatives" of UNICEF in countries in which UNICEF is established under the Basic Cooperation Agreement. It thus would be confusing to accord an honorary title of such a name to a non-staff member.

18 October 1994

30. Question of applicability of local law to United Nations Truce Supervision Organization special service agreements — Article 105 of the Charter — Convention on the Privileges and Immunities of the United Nations

Memorandum to the Acting Director, Field Administration and Logistics Division, Department of Peacekeeping Operations

1. Please refer to the memorandum on the above-caption subject of 22 September 1994.

2. It appears that Mr. A, who was employed by UNTSO as an individual contractor under a special service agreement (SSA), has initiated a legal action at the Jerusalem Regional Labour Court against UNTSO "for not complying with local Israel labour laws". The Chief Administrative Officer, UNTSO, asks for our guidance "regarding the obligation of the United Nations to comply with local labour laws in so far as the engagement of SSA contractors is concerned". We note that you indicate that "UNTSO's Legal Adviser has been in touch with local Israel authorities on this case", but we are unaware of the outcome of that effort.

3. The United Nations Truce Supervision Organization was established by the Security Council to supervise the truce in Palestine and to assist the parties in the supervision of the 1949 Armistice Agreements. A series of General Assembly and Security Council resolutions, including Assembly resolution 194(III) and Council resolutions 50 (1948) and 73 (1949), has authorized UNTSO to perform such tasks. UNTSO, therefore, is part of the United Nations, and, as far as its legal status and activities are concerned, it is entitled to the privileges and immunities of the United Nations under applicable international agreements.

4. Pursuant to paragraph 1 of Article 105 of the Charter of the United Nations, "the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes". Pursuant to paragraph 2 of that Article, officials of the Organization enjoy privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization. The above provisions are confirmed and specified in the 1946 Convention on the Privileges and Immunities of the United Nations, which stipulates, *inter alia*, that the United Nations and its officials shall be immune from

legal process (article II, section 2, and article V, section 18). Israel is a party to both the Charter of the United Nations and the 1946 Convention, and those instruments are therefore applicable to UNTSO and its officials. Thus, UNTSO is immune from legal process, and the legal action against it in an Israeli Court cannot be taken unless the Secretary-General waives the immunity for this purpose.

5. As for the question of the applicability of local national laws to SSA contractors, it is necessary to distinguish between the situation of a contractor who is of course bound by national law and the situation of the United Nations that is accorded privileges and immunities necessary to discharge its functions. We consider that the privileges and immunities of the Organization extend also to the ability to set conditions for service of independent contractors. Furthermore, by entering into such agreements with the United Nations, individual contractors agree to those terms and conditions and are therefore stopped from invoking local labour laws which would be otherwise applicable to matters explicitly covered in SSAs. The Contractor however is bound by the law in so far as it relates to his obligations, for example, to pay taxes, to pay obligatory insurance, etc.

6. As indicated in your memorandum and attachments to it, Mr. A was employed by UNTSO under a series of SSAs. The specific terms and conditions of his employment with UNTSO were established in those SSAs. Paragraph 8, "Arbitration", of the SSA provides for a mechanism for settlement of disputes between the parties. Under that mechanism, any dispute arising under the Agreement shall, "if attempts at settlement by negotiation have failed, be submitted to arbitration", and "the decision rendered in the arbitration shall constitute final adjudication of the dispute". Therefore, Mr. A is contractually bound to have followed the dispute settlement procedures as set out in his SSA with the United Nations rather than seeking resolution of his claims against the Organization through an Israeli court. The Organization should thus request the Israeli authorities to plead, in accordance with established procedures, the Organization's immunities if Mr. A pursues his claims before the Israeli courts rather than arbitrate his claim.

1 December 1994

Procedural and Institutional Issues

31. Status of national human rights institutions in United Nations bodies — Palestinian Independent Commission on Human Rights

Memorandum to the Chief of Staff, Executive Office of the Secretary-General

1. This is reply to your memorandum of 8 December 1993 on the above subject. You have requested our advice as to whether the "Palestinian Independent Commission on Human Rights" could be granted any sort of "status" *à-vis* the United Nations.

2. The question relates to a more general issue concerning the status of so-called "national human rights institutions" in United Nations bodies. More and more such institutions are created under national law to provide an internal control mechanism for the protection and promotion of human rights, but function independently of governmental authority. They do not therefore fall within the traditional categories of intergovernmental organizations or non-governmental organizations, but are governmental institutions albeit internally independent. For the 1993 World Conference on Human Rights, the General Assembly approved, for the first time, a separate rule of procedure providing for the participation of "representatives of national human rights institutions". However, the Economic and Social Council and the Commission on Human Rights have yet to amend their relevant rules and practices to provide for the participation of such institutions.

3. At present, we understand that the practice has been that States which have established such institutions allow the representatives of such institutions to participate in the work of the Commission on Human Rights as part of their own delegations. Thus, while maintaining internally their independence, such institutions speak from behind the nameplate of the State which created them. There is no legal objection to this procedure in the absence of a decision according such institutions separate rights of participation.

4. The present ad hoc situation is compounded in the case of the institution which is the subject of your memorandum because of the particular status of Palestine in the Organization. For the time being and absent any decision on the matter by a competent body, if Palestine and Palestinian Independent Commission on Human Rights agree that the Commission may speak from the observer seat of the delegation of Palestine in United Nations bodies and still internally maintain its status as an independent Commission, there is no legal objection to their doing so. Each entity admitted or invited to participate in the General Assembly decides on its own composition and who speaks for it.

4 January 1994

32. Question of whether the first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change would take place on a different date than the one stipulated in the Convention

Facsimile to the Legal Adviser, Climate Change Secretariat, Geneva

This is with reference to your telephone conversation of 13 January 1994 with a member of this Office, in which you requested the views of this Office as to the situation determined by the entry into force, on 21 March 1994, of the United Nations Framework Convention on Climate Change[49]. According to your explanation, a problem arises from the fact that the General Assembly, by resolution 48/189 of 21 December 1993, has accepted the offer of Germany to host the first session of the Conference of the Parties to the Convention from 28 March to 7 April 1995. Under

article 7.4 of the Convention, the first Conference of the Parties to the Convention shall take place not later than one year after the date of entry into force of the Convention, i.e., by 21 March 1995.

We note that, in paragraph 1 of resolution 48/189, the General Assembly made the holding of the first session of the Conference of the Parties to the Convention on the dates indicated "subject to the applicable provisions of the United Nations Framework Convention on Climate Change". Thus, article 7.4, referred to above, is applicable. Therefore, the first session of the Conference of the Parties to the Convention should be held within the time limit indicated in article 7.4 of the Convention, namely, by 21 March 1995. However, the States parties could, after the entry into force of the Convention, decide by unanimous consent to hold the first session of the Conference of the Parties to the Convention on the date indicated in resolution 48.189. In the absence of such unanimous consent, the dates of the first session of the Conference of the Parties to the Convention will have to conform to the letter of the Convention.

25 January 1994

33. Status of the Federal Republic of Yugoslavia after General Assembly resolution 47/1, especially with regard to the publication *Multilateral Treaties Deposited with the Secretary-General*

Letter to the Permanent Representative of a Member State

On behalf of the Secretary-General, I have the honour to acknowledge receipt of your letter to him dated 14 January 1994 by which you, *inter alia*, requested that "appropriate corrections" be made in the publication entitled *Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 1992*[50] and in other relevant publications and that steps be taken to ensure that subsequent publications "will accurately reflect the situation resulting from the dissolution and extinction of the former Yugoslavia."

With regard to you request, I should like to make the following observations:

(*a*) As you know, by letters dated 27 April 1992, addressed to the President of the Security Council and to the Secretary-General,[51] the Charge d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations transmitted the text of the "Declaration adopted on 27 April 1992 at the joint session of the Assembly of the Socialist Federal Republic of Yugoslavia, the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro". Paragraph 1 of the said Declaration reads in part:

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

By the letter addressed to the Secretary-General, the Charge d'affaires also transmitted a noted dated 27 April 1992 which contained the following statement:

"Strictly respecting the continuity of the international personality of Yugoslavia, the Federal Republic of Yugoslavia shall continue to fulfill all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia in international organizations and participation in international treaties ratified or acceded to by Yugoslavia."

(*b*) Following the issuance of said Declaration, various States rejected, or reserved their position on, the claim of the Federal Republic of Yugoslavia to continue the membership of the former Yugoslavia in international organizations and to continue its international legal personality (for example, the letter dated 27 May 1992 from the Minister for Foreign Affairs of your country addressed to the Secretary-General (A/47/234 - S/24028). Nonetheless, for approximately five months following the Declaration, from 27 April to 22 September 1992, representatives in the Federal Republic of Yugoslavia participated in United Nations meetings as representatives of Yugoslavia. On 22 September 1992, the "Prime Minister of the Federal Republic of Yugoslavia" spoke during the 7th plenary meeting of the forty-seventh session of the General Assembly.

(*c*) On 22 September 1992, the General Assembly, having received the recommendation of the Security Council of 19 September 1992 (resolution 777 (1992)) that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly, adopted resolution 47/1 by which the Assembly considered that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and, therefore, decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly.

(*d*) On 29 September 1992, I addressed separate letters to the Permanent Representatives of Bosnia and Herzegovina, and Croatia, to the United Nations setting out the considered view of the United Nations Secretariat regarding the practical consequences of the adoption by the General Assembly of resolution 47/1 (subsequently issued as a note by the Secretary-General (A/47/485)). I stated in those letters that "the resolution neither terminates nor suspends Yugoslavia's membership in the Organization… The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies." Since the publication of that statement of the practical consequences of the adoption of resolution 47/1, that resolution has been recalled by the Security Council (resolution 821 (1993)) and both recalled and reaffirmed by the General Assembly (resolutions 47/229 and 48/88, respectively), without any criticism of the interpretation given by the Secretariat.

(*e*) For one year following the Declaration, from 27 April 1992 to 29 April 1993, representatives of the Federal Republic of Yugoslavia were entitled to represent Yugoslavia in meetings of the Economic and Social Council and of its subsidiaries. On 29 April 1993, the General Assembly adopted resolution 47/229 by which it decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the Economic and Social Council.

(*f*) By paragraph 19 of its resolution 48/88 of 20 December 1993, the Assembly reaffirmed its resolution 47/1 of 22 September 1992 and urged Member States and Secretariat in fulfilling the spirit of that resolution, "to end the de facto working status of Serbia and Montenegro". As indicated in the report of the Secretary-General submitted pursuant to paragraph 29 of that resolution, the considered view of the Secretariat noted in paragraph (d) above has not been affected by the adoption of paragraph 19 of resolution 48/88. As stated in the report, "the Secretariat is not in a position to take action with regard to questions relating to the status of Member States in the absence of the appropriate decisions being taken by the competent organs of the Organization".[52]

(*g*) Similarly, while aware that various States reject or question the claim of the Federal Republic of Yugoslavia that it continues the international legal personality of the Socialist Federal Republic of Yugoslavia, including participation in international treaties ratified or acceded to by Yugoslavia, the Secretary-General as depositary is not in a position to reject or disregard that claim, which relates to the general international law question of succession of States, in the absence of any decision taken by a competent organ representative of the international community of States as a whole or by a competent treaty organ with regard to a particular treaty or convention. None of the General Assembly resolutions referred to above address this general international law question.

(*h*) In the absence of a decision of such an organ providing guidance on the matter, the Secretary-General maintains the status quo with regard to treaty actions and references in publications to Yugoslavia. For example, since 27 April 1992, the Secretary-General has issued three depositary notifications concerning treaty actions transmitted by the Government of Yugoslavia relating to treaties which had been in force in the Socialist Federal Republic of Yugoslavia. Those actions were the following: deposit of instrument of acceptance of amendments to the Constitution of the World Health Organization (C.N.153.1993.TREATIES-3 of 19 July 1993); communication with respect to its position concerning the succession by Bosnia and Herzegovina of the Convention on the Prevention and Punishment of the Crime of Genocide (C.N.228.1992.TREATIES-3 of 26 August 1993); and notification of application of Regulations annexed to the Agreement concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts (C.N.219.1993.TREATIES-12 of 29 August 1993). No objections or communications have been received with regard to the aforementioned notifications.

(*i*) The foregoing is without prejudice to the application of the law of treaties under general international law or of provisions of particular treaties affecting the participation of States as parties.

In light of the above observations, I regret to inform you that the Secretary-General is unable to accede to your requests.

31 January 1994

34. Observer Status in the General Assembly of entities other than States — Status of the Sovereign Military Order of Malta

Memorandum to the Secretary-General

…

2. In the practice of the General Assembly, intergovernmental organizations, as well as other organizations mainly of a national liberation movement character, have been accorded observer status by a specific decision of the General Assembly in each case. This is achieved through the inscription of an appropriate item in the agenda of the Assembly at the initiative of one or more Member States, and the adoption of a resolution by the General Assembly according such status to the organization in question.

3. In the case of observer States, the General Assembly does not take any action; rather it is the Secretary-General who provides observer facilities to non-Member States which establish permanent offices at Headquarters. As you know, the Secretary-General is not in a position to alone decide whether or not a given entity possesses all the attributes of a sovereign State acting on the international plane. It has therefore been established by a practice which goes back to the 1950s that the decisive criterion for determining whether or not an entity is a "State" for purposes of according observer State facilities is whether or not the applicant in question has been admitted as a member State of one of the specialized agencies of the United Nations.

4. The Sovereign Military Order of Malta is neither a full nor an associate member of any specialized agency. The Order has attempted to establish observer status with various United Nations specialized agencies and programmes. As far as the United Nations itself is concerned, while the Order maintains informal links with UNICEF or other United Nations programmes, only one intergovernmental body has granted the status of observer to the Order of Malta: the Executive Committee of UNHCR in 1957.

5. As far as specialized agencies are concerned, the Order enjoys a limited form of observer status with UNESCO and WHO. In the case of UNESCO it was the Executive Board, an intergovernmental body, which decided in 1962 to authorize the Director-General to invite the Order of Malta to send observers to the General Conference. In the case of WHO, the Order applied unsuccessfully for full membership in the early 1950s. In 1962, the Director-General invited the Order to participate in the World Health Assembly as an observer whenever the agenda included items which might be of interest to it. The foregoing shows that the status of observer in international organizations is granted either by an intergovernmental organ or according to rules and practices which are specific to individual organizations. The example of WHO, in particular, shows that specialized agencies have their own rules and practices concerning inviting observers to meetings.

6. In light of the above, it is my view that it would not be advisable for the Secretary-General to depart from the established practice of the Organization. In the practice of the United Nations, the Secretary-General does not, absent authorization, invite non-members to participate in intergovernmental meetings as observers. Intergovernmental bodies should themselves determine which entities they wish to

invite to participate in their meetings as observers, with only one exception: State members of specialized agencies establishing permanent observer offices may be accorded observer facilities by the Secretary-General.

7. The General Assembly is, of course, free to decide to accord observer status to the Order of Malta as an intergovernmental or other organization. The precedent of according observer status to a *sui generis* organization already exists in the case of ICRC. This requires that Member States propose the inscription of an appropriate item on the agenda of the Assembly and sponsor the relevant draft resolution, and that said resolution be adopted by a majority of Member States present and voting.

3 February 1994

35. Conditions of access to internal United Nations documentation and to archives of peacekeeping operations

Letter to a researcher

This is in response to your letter of 25 March 1994, in which you indicate that, as a researcher with the Belgian National Fund for Scientific Research, you are preparing a doctoral thesis on the responsibility of international organizations. In this connection, you have asked "(a) to be verbally briefed on the procedure presently followed for the settlement of claims instituted by third parties against the United Nations for damages allegedly suffered in the course of peacekeeping operations, and (b) to be given access to the archives of some of the peacekeeping operations that have come to an end in order to discover through specific cases how such claims have been settled in the past".

As regards you request, we would like to inform you that access to United Nations documents and files are governed by the following considerations:

(*a*) Internal office files containing inter-office memoranda and correspondence are not open either to Governments or to members of the public;

(*b*) Official documents and records published with a United Nations document symbol and given general circulation are readily available for review by Governments and interested individuals;

(*c*) Certain official documents are given only limited circulation and are intended for use only by a particular United Nations organ. In these instances, circulation of the documents is limited to the membership of the organs concerned. However, documents with a restricted circulation become accessible to interested Governments and individuals in the United Nations Library when they are discussed in open meetings, which is normally the case. Occasionally, however, certain documents with a restricted circulation are considered in closed session and then they are available only to the participants in the meeting in question. In such cases, access to the restricted documents is governed by the United Nations body for whose considerations they were prepared.

Within this framework, we wish to indicate that the particular archives files relating to claims submitted by third parties for damages allegedly incurred as a result of the activities of a United Nations peacekeeping operation consist primarily of internal inter-office memoranda, containing information not intended for use out-

side the Secretariat, and other materials of a confidential and privileged nature. These materials include, *inter alia*, correspondence exchanged with the claimants concerned which, if divulged, could affect the privacy of the individuals named therein. Accordingly, these files are not open for inspection by the public.

30 March 1994

36. Question of whether a system of United Nations awards could be created by the Secretary-General for providers of assistance — Power to establish and grant awards is a power of the Organization — Express or implied authority vested in the Secretary-General

Memorandum to the Under-Secretary-General for Humanitarian Affairs

1. We refer to your memorandum of 24 March 1994 in which you seek our advice on a request addressed to the Secretary-General by Ministers representing various States, being States affected by the Chernobyl disaster, on a proposal to establish a series of awards, including medals, to honour prominent contributors of assistance to the victims of the disaster. You have requested our advice on the legal implications of the proposal.

…

3. In summary, our advice is that the creation of a system of awards as proposed would require a specific General Assembly resolution authorizing their inception, for the reasons outlined below.

(a) *Civilian awards*

4. The United Nations has the power to establish international awards for achievement in fields consistent with the purpose of the Organization under the Charter. Generally speaking, the power to establish and grant awards is a power of the Organization, as opposed to that of the Secretariat. As a result, United Nations practice has been for awards, including medals, to be established by resolutions of the General Assembly, which also set forth the criteria for their grant. The initiative for the creation of a new award thus ought to come from Member States or subsidiary organs who report to the General Assembly.

(b) *Military awards*

5. Another situation where this matter has arisen is in the establishment of medals by the United Nations for award to military personnel who have served on behalf of the Organization. In earlier advice of this Office, dated 10 November 1988, concerning the proposal to establish a medal commemorating the award of the 1989 Nobel Peace Prize to the United Nations Peacekeeping forces, we advised that the Secretary-General had the power to issue such military medal without express General Assembly resolution. In essence, this was because of the substantial administrative and executive powers given to the Secretary-General in respect of the various

United Nations peacekeeping missions. The issuance of medals to military (as opposed to civilian) personnel being an accepted and inherent part of the routine administration of armed forces. Consequently, the United Nations Emergency Force Medal for military personnel serving on assignment to the Force 1956-67,[53] the United Nations Medal, and the then proposed United Nations Commemorative Medal, and the regulations governing their award, in our view, did not require express specific authorization from the General Assembly.

6. Those awards can be contrasted with the United Nations Service Medal (Republic of Korea) which, in our view, required specific authorization of the General Assembly because of the markedly different role of the Secretary-General in that circumstance. There, the functions of the Secretary-General were limited. The military forces were made available to a Unified Command under the United States of America pursuant to Security Council resolution. However, the Secretary-General did not exercise express or implied authority over the Command or its Forces. In that situation, General Assembly resolution 483(V) of 12 December 1950 was required which expressly authorized the Secretary-General to make arrangements with the Unified Command in the Republic of Korea for the design and award of the medal.

(c) Chernobyl

7. With respect to the Chernobyl proposal, there is no express or implied authority vested in the Secretary-General that would, in itself, empower him to create the new awards.[54] I also observe that the potential recipients of the proposed awards would in all probability be comprised largely of non-United Nations personnel, therefore making it highly unlikely that the power to create the awards could be implied from the general powers of the Secretary-General vis-à-vis the Organization.

8. In conclusion, the proposal to create a system of awards for those prominent contributors of assistance to the Chernobyl disaster would in our view fall within the general rule outlined in paragraph 4 above, namely that a General Assembly resolution authorizing the creation of the awards is required. In addition, and of equal importance, would be the promulgation of regulations prescribing the criteria of eligibility for bestowal of the award which would cover such issues as the nature of the qualifying contribution, whether approval of national governments is required, posthumous awards, etc.

9. While the decision as to whether to proceed to promote a General Assembly resolution to establish a new system of awards is clearly a matter of a particular Member State or a subsidiary organ to the United Nations, we note that a resolution of the General Assembly would not be necessary if the system of awards and medals was established independently of the United Nations. This would not preclude the Secretary-General from playing a significant role in the presentation of the awards.

31 March 1994

37. Suspension of a member of the World Meteorological Organization from its rights and privileges — Renewal of membership rights — Articles 14 and 31 of the WMO Convention (Case of South Africa)

Memorandum to the Secretary-General of the World Meteorological Organization

1. This is in response to your letter dated 15 March 1994 in which you seek the advice of this Office concerning two alternative courses of action which can be taken by WMO with regard to the question of membership of South Africa in WMO after establishment of a democratic non-racial Government in South Africa and the adoption by the General Assembly of the United Nations of a resolution on restoring full membership rights to the Member State.

2. It is pointed out in your letter that the present policy of WMO regarding the South Africa was determined in 1975 by resolution 38 (Cg-VII) of the Seventh Congress of WMO providing that "the Government of the Republic of South Africa shall be immediately suspended from exercising its rights and enjoying privileges as a Member of WMO until it renounces its policy of racial discrimination, and abides by the United Nations resolutions concerning Namibia". Under the resolution the Secretary-General of WMO is also requested to implement its provisions and to bring the resolution to the attention of all concerned.

3. In the letter you inquire whether from a legal point of view the membership rights of South Africa should be restored by an action of the WMO Congress acting on the basis of article 31 of the WMO Convention[55] authorizing it to suspend a member from exercising its rights and enjoying the privileges, or such an action can be taken by the WMO Council by virtue of its function laid down in article 14, paragraph (a) of the Convention providing that the Council is responsible "to implement the decisions taken by the Members of the Organization either in Congress or by means of correspondence and to conduct the activities of the Organization in accordance with the intention of such decisions".

4. As noted above, article 31 of the WMO Convention provides that the WMO Congress may suspend a member from exercising its membership rights and enjoying privileges if that member fails to meet its obligations to the Organization under the WMO Convention. It could be noted, however, that according to that article such suspension should not be endless and is supposed to come to an end after a Member has fulfilled its obligations under the WMO Convention.

5. The text of article 31 leaves no doubts that the authority to determine whether membership rights and privileges should be suspended belongs only to the WMO Congress. It may also be logically concluded from the text of this article that the Congress can subsequently reverse its decision if it comes to a conclusion that the member concerned has fulfilled its obligations under the WMO Convention.

6. At the same time this Office is of the view that the aforementioned understanding does not necessarily mean that under article 31 the membership rights and privileges should only be restored through an act of the WMO Congress. To the contrary, article 31 in a quite explicit way provides that suspension of the membership rights and privileges should continue until a Member has met its obligations. Therefore, should a member fulfil its obligations under the WMO Convention, in accordance with article 31 its membership rights and privileges are to be restored.

7. In this connection a question may arise whether renewal of the membership rights and privileges can take place automatically or an action by one of the WMO principal organs would still be required. For example, would it be possible for a member of the Organization, the membership rights and privileges of which were suspended by the Congress, to submit a statement asserting that from now on it has the full membership rights and privileges because it has met its obligations under the WMO Convention. In this regard this Office is strongly of the view that article 31 does not provide grounds for such interpretation. We believe that under article 31 the question of renewal of the membership rights cannot be decided unilaterally by a Member of the Organization, because such renewal affects the interests of all members of WMO. Therefore, a competent organ of WMO should verify information concerning the fulfillment of the obligations under the WMO Convention, which may be submitted either by the secretariat or by the State concerned, and should decide whether it is in a position to concur with it.

8. It was pointed out above that under article 331 of the Convention the WMO Congress has the authority to make such determination. In our opinion this authority of the Congress also follows from article 8, paragraph (a) of the Convention, stating that the Congress shall be responsible to determine general policies for the fulfillment of the purposes of the Organization.

9. It is the view of this Office that, in accordance with the provisions of article 14, paragraph (a) of the WMO Constitution, in addition to the Congress, the Executive Council of WMO can also act as an organ competent to consider questions related to renewal of membership rights and privileges. Article 14, paragraph (a) of the WMO Convention provides that one of the primary functions of the Executive Council shall be to implement the decisions taken by the Congress. Therefore, if the Congress decides that a member shall be suspended from exercising its rights and enjoying privileges until it has fulfilled particular obligations under the WMO Convention, it is the responsibility of the Executive Council to implement all parts of that decision.

10. In the case of South Africa, the Seventh Congress of WMO in its resolution 38 (Cg-VII) established the conditions under which the Government of South Africa can resume exercising its rights and enjoying privileges as a Member of WMO. When these conditions are met, the Executive Council, in fulfillment of its responsibilities under article 14, paragraph (a) of the WMO Convention, should take an appropriate action implementing the respective part of the aforementioned decision of the Seventh Congress.

8 April 1994

38. Procedures required for an organization to obtain observer status with the United Nations

Memorandum to a Political Affairs Officer

I would like to refer to your memorandum of 15 April 1994 concerning the procedures for obtaining observer status with the United Nations.

1. The application for observer status may be made by either the South Pacific Forum or the South Pacific Forum Secretariat. Pursuant to article 1 of the Agreement Establishing the South Pacific Forum Secretariat,[56] the South Pacific Forum

comprises the heads of Government of the member States listed therein and such other heads of Government as may be admitted to the Forum with the approval of the Forum. Pursuant to articles IV and XII, the Governments of those same States mentioned in article I comprise the members of the South Pacific Forum Secretariat upon their signature of the Agreement and such other Governments admitted to membership of the Secretariat by acceding to the Agreement with the approval of the Forum. In that all States members of the Forum have signed the Agreement, the members of the Forum and the members of the Forum Secretariat are one and the same. It is important to note that the term "Secretariat" in the context of the South Pacific Forum Secretariat is not analogous to the use of the term with reference to the Secretariat of the United Nations. In the former context, the Secretariat is the body of Governments that comprise the intergovernmental organization itself.

2. With respect to the procedures for obtaining observer status, please be advised that the rules of procedure of the General Assembly area silent on the question of observers. In practice, however the General Assembly has adopted resolutions according observer status to various intergovernmental organizations. The first step is for Member States to request the inclusion of an appropriate item on the agenda of the General Assembly. Pursuant to the relevant rules, the request must be accompanied by an explanatory memorandum and, if possible, by basic documents or a draft resolution. The General Committee of the General Assembly then reviews the request and recommends to the General Assembly whether or not to include the item on the agenda.

3. Assuming the item is inscribed on the agenda, the next step is for Member States to sponsor a draft resolution by which the General Assembly would decide that the South Pacific Forum is invited to participate in the sessions and the work of the General Assembly in the capacity of observer. It is then a matter for the States Members of the Organization to take a decision on the proposed resolution, if necessary by a majority vote of the Members present and voting.

21 April 1994

39. Status of the Global Environment Facility

Memorandum to the Executive Secretary, Intergovernmental Committeee for the Convention on Biological Diversity

1. This is in response to your memorandum of 11 April 1994. In that memorandum you point out that in accordance with paragraphs 1 and 2 of article 21 of the Convention on Biological Diversity,[57] the first meeting of the Conference of the Parties to the Convention should, *inter alia*, consider the questions related to the selection of the institutional structure to operate the financial mechanism for the provision of financial resources to developing country parties, as well as the nature of the arrangements between the Conference of the Parties and the institutional structure selected by it. It is further noted in the memorandum that, so far, the financial mechanism has been operated on an interim basis by the Global Environment Facility (GEF), as a pilot programme of the World Bank, and that on 16 march 1994, the States participating in the pilot phase and other interested States accepted the Instrument for the Establishment of the Restructured GEF.

2. According to the memorandum, in the light of the foregoing, the Intergovernmental Committee for the Convention on Biological Diversity (ICCBD) would like to seek the advice of this Office regarding the following questions related to the legal status of the restructured GEF:

(*a*) Does the GEF, as established in March 1994, have the international legal personality to enter into legally binding arrangements under international law?

(*b*) If the answer to question 1 is yes, does the legal personality extend to its subsidiary bodies?

(*c*) If the answer to question 1 is no, is it possible for other entities to enter into legal arrangements on behalf of the GEF? If not, can the critical characteristics of such an entity be identified?

General observations

3. An international entity has legal personality if, in accordance with its constituent instrument, it is established as an international organization subject of international law. Under subparagraph (i) of article I of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,[58] the term "international organization" is defined as "intergovernmental organization." Legal personality of an international entity/organization is determined and limited by the constituent instrument creating such an organization. Through its constituent instrument an international entity/organization has implied powers to carry out its purposes and duties and thus has the legal capacity to enter into treaties, contracts, acquire and dispose of property, be a party to judicial proceedings. The International Court of Justice (ICJ) in the 1949 advisory opinion Repatriation for Injuries Suffered in the Service of the United Nations reaffirmed that international entities/organizations would not be able to carry out the intentions of their founders if such organizations were devoid of international personality.

4. The 1986 Vienna Convention provides in article 6 that the capacity of an international organization to conclude treaties is governed by the rules of that organization. Under article 2 of the Convention the term "rules of the organization" means, in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization.

5. In the light of the foregoing, it should be pointed out that for an international entity to have the capacity to enter into legally binding agreements/arrangements, that entity should be established either as an international organization, with its own legal personality or as a subsidiary body of an international organization or organizations. In the latter case a decision on the establishment of a subsidiary body should make it clear that this body is entrusted by the parent organization or organizations with the legal capacity to enter into legally binding arrangements within its competence.

Distinct identity of the restructured GEF

6. The Global Environment Facility was originally established as a pilot programme/subsidiary body of the International Bank for Reconstruction and Development (World Bank). Resolution No. 91-5 of the Executive Directors of the World Bank, dated 14 March 1991, provided that the Facility was established, con-

sisting of the Global Environment Trust Fund, Co-financing Arrangements with the Global Trust Fund, the Ozone Projects Trust Fund, and such other funds and agreements as the Bank may from time to time establish or agree to administer within the Facility.

7. Under resolution 91-5 the GEF, as a subsidiary body of the World Bank, was not entrusted with the legal capacity to enter independently into agreements and arrangements with international organizations or States. The resolution is quite explicit in this regard. In paragraph 19, section D (Other Arrangements) it states: "The Bank is authorized to enter into other agreements and arrangements with countries party to international agreements for the protection of global environment, international organizations and other entities in order to administer and manage the financing for the purpose of, and on terms consistent with this Resolution." It should be further noted that under paragraph 3 (Global environment co-financing arrangements) of the resolution it is only the Trustee (the World Bank) which is authorized to enter into co-financing arrangements with participants (donor countries) and others for the purpose of, and subject to the terms of, the resolution.

8. For the purposes of the present study, it should therefore first be determined as to whether on 16 March 1994 the restructured GEF was established as a new entity, distinguished from the original GEF.

9. Paragraph 1 of the Instrument for the Establishment of the Restructured Global Environment Facility provides that "this Instrument, having been accepted by representatives of the States participating in the GEF at their meeting in Geneva, Switzerland, from 14 to 16 march 1994, shall be adopted by the Implementing Agencies (UNDP, UNEP and the World Bank) in accordance with their respective rules and procedural requirements". Under paragraph 32 of the Instrument, the World Bank is invited to terminate the former Global Environment Trust Fund and to transfer any funds, receipts, assets and liabilities, held in it upon termination, to the new GEF Trust Fund, established in accordance with paragraph 8 of the Instrument. Paragraph 4 of the Instrument further states that amendment or termination of it shall become effective only after the adoption by the implementing agencies in accordance with their respective rules and procedural requirements.

10. It appears from the above that the restructured GEF is no longer a body established by the Executive Directors of the World Bank. According to the Instrument on the Establishment of the Restructured GEF, the Facility will become operative after the Instrument is approved by the respective governing bodies of the Implementing Agencies. A similar act of approval on the part of the implementing agencies will also be required if subsequently, at some time in the future, it is determined that the restructured GEF is a new entity, which is distinct from the former GEF.

Question as to whether the restructured GEF has legal personality

11. It was noted above that an entity has legal capacity to enter into legally binding arrangements if it is established as an international organization or as a subsidiary body of an international organization or organizations entrusted by the latter with the capacity to enter into arrangements within the areas of its responsibilities.

12. The restructured GEF is established in accordance with the Instrument, which, having been accepted by representatives of States, requires adoption by the Implementing Agencies.

13. Having examined the text of the Instrument this Office is of the view that it does not constitute a treaty among the States participating in the negotiations on the establishment of the restructured GEF. Reference in the Instrument to the acceptance of its text by *representatives* (emphasis added) of States is an important factor indicating that the Instrument is supported by States members of the World Bank and of the United Nations (UNDP and UNEP as United Nations programmes are acting on behalf of the Organization) and therefore that its approval by the governing bodies of the implementing agencies is almost predecided. At the same time, such reference cannot be interpreted as amounting to the act of formal acceptance of the Instrument by States which took part in negotiations on it. Although representatives of States accepted the text of the Instrument at their meeting in Geneva, States as such did not become contracting parties to the Instrument at that meeting.

14. It should be noted in this regard that the Instrument does not contain provisions providing that States should give their consent to be bound by the Instrument. According to paragraph 7 of the Instrument, any State Member of the United Nations or of any of its specialized agencies may become a participant in the GEF by depositing with the secretariat an instrument of participation substantially in the form set out in Annex A. In the case of a State contributing to the GEF Trust Fund, an instrument of commitment shall be deemed to serve as an instrument of participation. Similarly, any participant may withdraw from the GEF by depositing with the secretariat an instrument of termination of participation substantially in the form set out in Annex A. A standard text of notification of participation/termination of participation contained in Annex A reads as follows:

> "The Government of … hereby notifies the Chief Executive Officer of the Global Environment Facility ("The Facility") that it will participate (terminate its participation) in the Facility."

15. In addition, it should be pointed out that under the Instrument its participants lack the final authority to amend or terminate the Instrument. Representatives of participants may only take part in the consideration and approval by the Assembly and the Council of the GEF of the documents containing suggestions for amendments or termination.

16. In the light of the above, this Office is of the view that the aforementioned notification of participation in the GEF is not equivalent to the expression of consent to be bound by the Instrument and that the status of a participant in the GEF is not equivalent to the status of a contracting party under the law of treaties.

Legal nature of the restructured GEF

17. Analysis of the GEF Instrument, in the opinion of this Office, proves that the restructured Facility is not established as a n international organization and therefore it does not have legal personality. We believe that the restructured GEF constitutes a joint subsidiary body, in the form of a financial mechanism created by the World Bank and UNDP and UNEP, acting on behalf of the United Nations. This conclusion is based on the provisions of the Instrument, referred to above, providing that in order to become legally effective the Instrument should be approved by parallel decisions of the governing bodies of the implementing agencies. If need be, the Instrument could be amended or terminated only by similar parallel decisions of the agencies.

18. It should be pointed out that although the GEF was created as a subsidiary body, its organs have considerable authority in governance of the GEF activities and the role of parent organizations in this regard is rather limited. This is evident from the provisions of the Instrument related to the governance and structure of the Facility (para. 11.21). At the same time, the Instrument is short in providing the restructured Facility with the legal capacity to enter into legally binding arrangements or agreements.

19. Under paragraphs 20(g) and 27 of the Instrument, the Council of the Facility is empowered with the authority to consider and approve cooperative arrangements or agreements with the Conferences of the parties of the United Nations Framework Convention on Climate Change and the convention on Biological Diversity. However, having been considered and approved by the Council, in accordance with paragraph 7 of Annex B, these cooperative arrangements and agreements will have to be formalized by the World Bank.

20. The Instrument is silent regarding the procedure which should be followed if the GEF decides to negotiate arrangements or agreements with entities other than the two Conventions. Nevertheless, it may be assumed that the intention of the drafters of the Instrument was to apply in such cases by analogy the aforementioned provisions of the Instrument relating to the conclusion of arrangements or agreements with the organs of the two Conventions.

Conclusions

21. Having reviewed the Instrument for the Establishment of the Restructured Global Facility and other relevant material, this Office is of the opinion that the restructured GEF is not established as a new internatioinal organization — new institution — and therefore it does not have legal personality under internation law. Consequently, subsidiary organs of the restructured GEF cannot have legal personality as well.

22. The restructured GEF is a subsidiary body, in the form of a financial mechanism, of the World Bank and United Nations, acting through UNDP and UNEP. Under the Instrument, the parent organization assigned to the GEF considerable autonomy in governance of its activities, including the authority to negotiate arrangements and agreements with other international entities for the purposes of the implementation of the objectives of the Facility. However, the Facility is not entrusted by the parent organizations with the legal capacity to enter into legally binding arrangements or agreements. Any arrangement or agreement negotiated by the GEF should be finalized by the World Bank. In most cases such formalization would probably represent a mere formality, but it remains a legal requirement. Therefore, from the legal point of view, under the Instrument, the World Bank is the entity which will enter into arrangements or agreements on behalf of the GEF. The World Bank shall also be the Trustee of the GEF Trust Fund. In accordance with paragraph 13 of Annex B to the instrument, the privileges and immunities accorded to the Trustee under its Articles of Agreement shall apply to the property, assets, archives, income, operations and transactions of the GEF Trust Fund.

31 May 1994

40. Question of credentials, voting rights and financial obligations of South Africa upon resumption of its participation in the work of the General Assembly — Article 17 of the Charter

Memorandum to the Chief of Staff, Executive Office of the Secretary-General

1. In response to your request for comments in connection with a note on a meeting with the Permanent Representative of South Africa on the above subject, I would like to submit the following observations.

2. The resumption of participation by South Africa in the work of the General Assembly and other United Nations bodies raises the issues of credentials, voting rights and financial obligations under Article 17 of the Charter of the United Nations.

3. As far as the issue of credentials is concerned the situation is very simple. When the Government of South Africa submits credentials, they will be forwarded to the Credentials Committee of the General Assembly. It is our understanding that, since such credentials are now being issued by a legitimate Government, they will be accepted by the Credentials Committee, and subsequently, pursuant to the recommendation of the Credentials Committee, by the General Assembly.

4. The issue of South Africa's voting rights is more complicated. Article 19 of the Charter provides that a Member which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of contributions due from it for the preceding two full years. The second sentence of Article 19, however, provides that the General Assembly may permit such a Member to vote "if it is satisfied that the failure to pay is due to conditions beyond the control of the Member". Such a decision is within the exclusive competence of the General Assembly, upon the advice of the Committee on Contributions. Rule 160 of the rules of procedure of the General Assembly provides in part, that the Committee shall "advise the General Assembly … on appeals by Members for a change of assessments and on the action to be taken with regard to the application of Article 19 of the Charter". There is a limited practice in this regard. However, typically the request is made by the country itself.

5. Pursuant to the first sentence of Article 19 of the Charter, South Africa is currently in arrears and thus may not vote in the General Assembly. Pursuant to the second sentence of Article 19 of the Charter, the General Assembly may nevertheless permit South Africa to vote if it is satisfied that South Africa's failure to pay is attributable to conditions beyond its control. That decision would allow South Africa to vote in the General Assembly notwithstanding the fact that its arrears have surpassed the limit provided for in Article 19. It should be noted that, so far, the General Assembly has never explicitly applied this provision of Article 19.

6. With reference to the issue of South Africa's financial obligations it must be pointed out that, although the Government of South Africa was unable to participate in the work of the General Assembly and other United Nations bodies, South Africa's continued membership as a State in the United Nations and its obligations under Article 17 of the Charter have never been in dispute. As a matter of law South Africa has a legal obligation to pay the arrears which are due under Article 17 of the Charter.

7. Thus, even if the General Assembly were to decide pursuant to Article 19 that it is satisfied that the failure of South Africa to pay is due to conditions beyond its control, that decision would only allow South Africa to vote in the general Assembly notwithstanding the fact that its level of arrearages had surpassed the limit in Article 19. The assessment of South Africa and its arrearage would remain unaffected. Article 19 only relates to voting in the General Assembly and contains no provision for deferring or suspending assessments or for relieving a State of its financial obligations. That would be a matter of basic policy for the Members of the Organization, through the General Assembly, to determine in accordance with Article 17, paragraph 2, of the Charter: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly."

…

9. In connection with the case of China, it is worth mentioning that by its resolution 2758 (XXVI) of 25 October 1971, the General Assembly decided to expel forthwith the representatives of Chiang Kai-Shek from the place which they unlawfully occupy at the United Nations and to restore all rights to the People's Republic of China. Under the resolution, the representatives of the People's Republic of China were recognized as the only legitimate representatives of China to the United Nations. In the light of that resolution, the Assembly subsequently decided by resolution 30-49 C (XXXVII) that the assessed contributions for China should be based on the period starting from 25 October 1971. By the same resolution, all unpaid assessed contributions for the period prior to 25 October 1971 were transferred to a special account and were included as a part of the short-term deficit of the Organization for the purposes of compute that deficit.

It appears from the foregoing that from the legal point of view the case of China is completely distinct from the situation of South Africa.

1 June 1994

41. Question whether the World Health Organization can establish entities within the Organization or whether it can participate in the establishment, under the national laws of a Member State, of a private entity — Possibility of participation of a WHO staff member in his official capacity in the operation and management of such entity

Letter to the Deputy Legal Counsel, Legal Office, World Health Organization

This is in reference tot he letter of 24 June 1993 from the Legal Counsel, informing us of the various proposals for establishing "independent entities" with WHO or under it auspices, to perform fund-raising activities in support of projects endorsed by WHO. In addition, we were requested to provide information on precedents of similar arrangements within the United Nations system, such as those governing the relationship between UNIVCEF and its National Committees, and the UNDP participation in the "Council on Health Research for Development" (COHRED).

At issue are the following questions: (a) whether WHO can establish an "independent entity" with the Organization or under its auspices; (b) whether WHO can participate in the establishment, under the national laws of a Member State, of a private entity; in which case, (c) whether a WHO staff member may participate, in his official capacity, in the operation and management of the said entity.

(a) Creation of "independent entities" within WHO or under its auspices

The question of whether WHO can establish "independent entities" within the Organization should be determined in accordance with the Constitution, Regulations and Rules and other policy directives of WHO. We note, however, that except for the creation of internal judicial bodies or groups of experts with advisory functions, subsidiary organs must operate within the mandate and guidance set out by the Organization and are subject to its ultimate authority. The "independence" of such subsidiary organs is, therefore, in many respects relative. We can confirm that this is also the case with the United Nations. The establishment of subsidiary bodies is, under the Charter of the United Nations, within the sole authority of the principal organs of the United Nations, e.g., the Security Council, the General Assembly and the Economic and Social Council.

The establishment of a non-United Nations body to support activities of the Organization is only possible pursuant to national legislation, and in such cases the actual incorporation of such a body is left to private parties, without the Organization participating in the establishment or operation of that body. This is the case with the National Committees for UNICEF, which are established by the individuals under national legislation and operate separately and independently of UNICEF. National Committees, however, support UNICEF programmes on the basis of a relationship agreement with UNICEF. In at least one case, a non-United Nations body was created "under the auspices" of the United Nations but this was only done on the basis of a legislative authority from the General Assembly. Thus, pursuant to paragraph 20 of General Assemgbly resolution 44/67 ("Implementation of the International Plan of Action on Aging and Related Activities"), an independent international foundation, the Banyan Foundation, was established "under the patronage of the United Nations" for the purpose of developing an international fund-raising strategy covering policies and programmes for the aging. The Banyan Foundation was incorporated under French Law and a Relationship Agreement between the Foundation and the United Nations was subsequently concluded.

The description of a non-United Nations entity as being established "under the United Nations auspices" is likely to create the false impression that the said entity is part of the Organization or that its activities are formally endorsed by the Organization and thus expose it to financial liability for activities carried out by that entity and for which it has no control. For this reason, legislative authority is required before creating such a body and even then it is necessary to supervise the formation and functioning of the body to ensure that no legal nexus is created that may impute an agency relationship or other connection entailing endorsement of its activities. This indeed was done in case of the Banyan Foundation.

(b) Participation of the Organization in the establishment of a private entity and participation of its staff in the operation and management of such entity

The participation of the Organization as a founding member of a private entity incorporated under the national law of a Member State raises a number of conceptual and practical problems pertaining to the legal capacity of the Organization, its character and the privileges and immunities to which it is entitled. As a consequence this Office has consistently advised against any such participation or membership.

The participation of a staff member of the Organization in the operation and management of the private entity raises similar issues. As a participating member, the staff would subject himself to the laws of the incorporating State in respect of his activities with the said entity. To the extent that the staff member performs his activities in a representative capacity of the Organization, his activities could equally entail the liability of the Organization. The very concept of the Organization or its staff being held liable in such circumstances is incompatible with the status of the Organization and that of its officials.

1 June 1994

42. Establishment of diplomatic mission of a Member State to the Conference on Disarmament — Rules of procedure of the Conference – General Assembly resolution 257 (III)

Facsimile to the Director-General, United Nations Office at Geneva

Reference is made to your facsimile of 20 June 1994 concerning the opening of a separate mission in Geneva by a State to the conference on Disarmament.

We note from a previous communication dated 16 June 1994, with attachments on the matter, that Switzerland, by its note verbale dated 20 May 1994 circulated in Geneva, stated that the interested States may establish "separate diplomatic representations" to: (a) the United Nations and the specialized agencies; (b) the Conference on Disarmament; and (c) the General Agreement of Tariffs and Trade. Switzerland further announced that each of these representatives, which may share the same premises, will benefit, by analogy, from the application of the 1961 Vienna Convention on Diplomatic Relations.

We further note that in accordance with his letter dated 8 June 1994, addressed to the Permanent Representative of Switzerland, the Permanent Representative of [name of State] announced a decision to establish in Geneva a separate diplomatic representation to the Conference on Disarmament. In the light of these facts the Deputy Permanent Observer of Switzerland, in his facsimile of 13 June 1994 addressed to the under-Secretary-General of the Conference on Disarmament, *inter alia*, inquired as to what are the criteria for the establishment of a separate diplomatic mission to the Conference on Disarmament in general and in particular whether [name of State] could establish such a representation in view of the fact that it was not a member of the Conference on Disarmament but an observer.

In this connection, it is to be noted that the rules of procedure of the Conference do not regulate the question of representation and accreditation of the delegation of a State member of the Conference (rules 4, 5 and 6). In particular, rule 5 provides that "each delegation shall be accredited by a letter on the authority of the Minister for Foreign Affairs of the member State, addressed to the President of the Conference". However, the rules of procedure do not address at all the questions as to whether a permanent representation /mission could be established by either a State member of the Conference or a State which is not a member thereof.

In view of the fact that the Conference on Disarmament is not a United Nations body, the request by [name of State] and the question of its representation should in our view be considered by the Conference itself with a view to making appropriate decisions on the matter.

In this connection, United Nations practice could be recalled. The institution of permanent observers of non-member States in United Nations practice is traced to the designation by Switzerland in 1946 of a permanent observer. From a formal point of view, this practice is based on an exchange of letters between the non-member State and the Secretary-General. It was subsequently followed by many other non-member States and the institution of permanent observer missions has developed correspondingly. In 1948, the General Assembly adopted resolution 257 (III) concerning permanent missions to the United Nations. Subsequently, the need to codify the evolving practice in this area led to the adoption in 1975 of the Vienna Convention on the Representation of States in Their Relations with International Organizations of Universal Character (not yet in force).

22 June 1994

43. Question of Juridical Personality and legal capacity in relation to United Nations agencies, programmes and funds

Note to the Legal Counsel

Juridical personality and legal capacity[59]

(*a*) *International Intergovernmental Organizations*

In the *Reparation for Injuries Suffered in the Service of the United Nations* case,[60] the international Court of Justice determined that the United Nations was an international person.[61] The Court recognized, in that regard, that the "subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community".[62] Thus, the Court distinguished between the international personality of the United Nations, whose legal capacities were limited to its functions and purposes, and the sovereignty of States.

The Court's conclusion that the United Nations was an international person was on the basis of the attributes of the United Nations under the Charter, including the provisions in the Charter as regards its functions, purpose, organs, legal capacities and privileges and immunities, including its ability to conclude agreements with each of its Member States. On this basis, therefore, there is no longer any dispute that other international intergovernmental organizations, similarly endowed, possess international personality separate from that of their member States. The possession of international legal personality means that the organization concerned can act on the international plane and exercise certain of the capacities of the subjects of international law, i.e., States. It is acknowledged, however, that organizations do not all have international legal personality and even those which do, have limited capacities on the international plane. They only exercise such legal capacities on the international plane as are necessary to achieve their purpose.[63]

As a consequence of the recognition of the international personality of international organizations, the constituent instruments of those organizations contain provisions granting them capacities to operate also at the municipal level. Such a provision in a treaty establishing the organization in question is in many respects sufficient to empower the organization to exercise legal capacities in the territories of its member States.[64] However, in some countries where treaties are not self-executing, internal national legislation may be necessary to achieve this effect.

As regards the United Nations, Article 104 of the Charter of the United Nations provides that the "Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes," and article 2 of the General Convention further elaborates on its legal capacities.[65] It is, however, still incumbent on the Member States to take the necessary action under their laws to meet their obligations under this provision of the Charter, except in countries where a treaty is self-executing.[66]

(*b*) Subsidiary bodies of international organizations

The legal status of subsidiary bodies of international organizations is not as clear. These bodies have proliferated and not all have a clear legal status, even under their own constituent instruments.

In the case of the United Nations, "such subsidiary organs as may be found necessary may be established in accordance with the present Charter" (see Article 7, para. 2, of the Charter).[67] For purposes of this note, the present discussion will focus on those bodies which have been established by the General Assembly, with their own governing bodies and are independently funded. Example of such bodies are UNDP, UNICEF, UNEP and UNFPA.

In some cases, like UNFPA, the General Assembly has expressly designated them as subsidiary organs and in others, such as UNICEF, it has accorded them expressly with certain legal capacities.[68] But the practice of the Assembly has not always been uniform.[69]

As indicated above, international organizations have been recognized to possess the requisite personality to exercise certain legal capacities, as necessary, to carry out their functions. There are equally compelling reasons for recognizing the capacity of defined subsidiary bodies of international organizations, for certain purposes, to perform legal acts and incur legal obligations in the name of their parent body, or in their own names on behalf of such parent body.[70] This is essential in order to enable the subsidiary bodies to discharge their mandates, as well as to protect the parent organizations from liability resulting from the activities of their subsidiaries, which they form purposely separately with independent financial resources.[71] However, not all subsidiaries qualify for such recognition and the capacities they exercise need not be the same.

It is not denied that many of the subsidiary bodies have been provided broad functions in the economic and social sectors, to work with Governments in the design of capital development and other projects in the areas of trade, health, child welfare, the alleviation of poverty, illiteracy and disease. To the extent, therefore, that the subsidiary body's functions entail activities which cannot be performed without exercise of certain legal capacities, such bodies must be recognized as endowed with the authority to exercise such capacities.[72] However, the ability to exercise certain legal capacities does not mean that such subsidiary bodies possess their own international personality.[73] They do not possess international personality separate

from that of their parent organization and thus cannot perform international acts or incur international obligations, except as expressly authorized by their parent bodies upon demonstrations of possessing "full powers".[74] Their capacities are therefore derived from the personality of the parent body.

At the municipal level, and to the extent that they have been granted broad mandates to undertake and execute activities that engage legal responsibilities to third parties, subsidiary bodies do not act in their own name. However, before they can exercise the right to perform certain acts, such as acquisition of real property and institution of legal actions, internal legislative authorization may be required.[75] It is thus possible to argue that their capacities are essentially territorial in scope depending on whether the subsidiary body conducts operations in the country and whether the law of that particular country recognized such a body as possessing legal capacity.[76]

In the case of the United Nations subsidiary bodies, only a few can be said to possess the authority to exercise legal capacities. The various United Nations programmes and funds enumerated in the United Nations Office Agreement satisfy the main criteria for the exercise of legal capacities, in terms of their broad functions, organs, composition and funding. In order for them to exercise such capacities within the territory in which they conduct their activities, the consent of the State concerned is required, and the United Nations Office Agreement, in particular its article 3, is intended to serve that purpose.

At the current stage, when we are only dealing with amending the text of the United Nations Office Agreement so that it conforms to General Assembly resolution 48/209, it is suggested that article 3 should be left as is. Its text simply sets out the legal capacities that are necessary for the conduct of the activities of the United Nations programmes and funds in the territory of the State concerned. The text does not raise any issues of those United Nations programmes and funds being endorsed with international personality separate from that of the United Nations.

However, the reference to the "Office," as also entitled to exercise legal capacities, was deleted because resolution 48/209 makes it clear that there will no longer be an integrated United Nations office, and that the offices to be established will be field offices of the United Nations programmes and funds. As such, they are not separate from the United Nations programmes and funds themselves and cannot exercise any capacities separate from those accorded to and exercised by such programmes and funds.

26 July 1994

44. Conditions of the use of United Nations premises[73] — Charge of rental costs — General Assembly resolution 41/213 — Status of United Nations Institute for Training and Research

Memorandum to the Under-Secretary-General for Administration and Management

1. This is in reference to the matter of rent charged to UNITAR for the occupation of office space at the premises of the United Nations Office in Geneva, specifically, at the Petit Saconnex.

2. The matter of rent was raised with this Office by the Acting Executive Director of UNITAR, in a memorandum dated 16 may 1994.

…

4. We have carefully reviewed the pertinent documents on this matter, including the resolution of the General Assembly on the basis of which UNITAR has been charged rent. We note in this respect that, in resolution 41/213, the General Assembly did not itself determine the category of entities, including UNITAR, using United Nations premises which should be charged with rental costs. The conclusion that UNITAR must pay rent has been deduced from the approval by the General Assembly, in resolution 41/213, of the report of the Group of High-level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations ("Group of Experts"), which recommends that Member States and other users occupying office space on United Nations premises should pay rent. The Assembly, after recalling its resolution 40/237 of 18 December 1985, by which it established the Group of Experts, decided that the recommendations, as agreed upon and as contained in the report of the Group of Experts, should be implemented by the Secretary-General, as well as by other relevant organs and bodies of the United Nations. A report, dated 15 August 1986, stated, *inter alia*, in its recommendation 36, that:

> "*Member States and other users* occupying office space on United Nations premises should pay a rent based on current commercial rates" (emphasis added).

5. We note that this matter has been the subject of discussion in the context of the Administration Committee on Coordination (ACC) machinery and, following the recommendation of the Group of Experts, the Consultative Committee on Administrative Questions on Financial and Budgetary Questions (CCAQ) was informed by the United Nations as follows:

> "24. Further to one of the provisions of General Assembly resolution 41/213, the United Nations had informed the Committee at the last session that it would be charging rent from 1990 onwards to *all agencies and other outside bodies which occupied space in United Nations premises*" (emphasis added).[77]

6. The recommendation of the Group of Experts stated that, as a cost-saving measure and optimum utilization of space, "Member States and other users" which occupy office space on United Nations premises should pay rent. The words "other users" in this context have to be interpreted *ejusdem generis*, in a manner consistent with the context in which they are used. In this case, these words follow an enumerated category (i.e., Member States), and therefore, such interpretation should be in keeping with this category. "Member States" are separate juridical persons from the United Nations and it is reasonable to assume that "other users," as used in the report, also referred to entities separate from the United Nations. "Member States and other users" should be understood as a *numerus clausus* enumeration, so that no other entity with a different legal nature from that of those enumerated in the recommendation of the Group of Experts should be included in such enumeration. This understanding is borne out by the information noted in the ACC report which limits rental payments to all agencies and outside bodies. The term "agencies" is used in

the United Nations to refer to the specialized agencies which, though part of the United Nations system, are nevertheless separate legal entities.[7 8]

7. The legal nature of UNITAR, however, departs substantially from that of specialized agencies or other outside bodies. This can be determined by a review of the statute of UNITAR promulgated in November 1965 and amended in December 1989. UNITAR, though called an autonomous institution within the framework of the United Nations, was actually established under a statute promulgated by the Secretary-General, pursuant to General Assembly resolution 1934 (XVIII) of 11 December 1963 and to resolution 42/197 of 11 December 1987. The statute provides that its goals and functions must be connected with the work of the United Nations (article II.2) and that:

> The Institute shall conduct research and study related to the functions and objectives of the United Nations. *Such research and study shall give appropriate priority to the requirements of the Secretary-General of the United Nations and of other United Nations organs and the specialized agencies*" (article II.3) (emphasis added).

The statute also provides that the Institute shall be financed "from voluntary contributions made by Governments, intergovernmental sources, as well as from the income generated by the Reserve Fund" (article VIII.2).[79]

8. Accordingly, under the statute, UNITAR is a part of the Secretariat and thus it is neither an "agency" nor an "outside bod[y]," and to include it in the category of "other users", as used in the report of the group of experts, may not be correct as it does not enjoy a separate legal status, like States, from the United Nations. In the light of the above, UNITAR is not an entity to which, apart from other policy considerations, rent would be charged for the occupancy of United Nations office space based on General Assembly resolution 41/213.

9. On the question of policy, we note that UNITAR occupied a building in New York acquired by the United Nations with a grant from the Rockefeller Foundation in 1964. On these premises UNITAR did not pay rent for the building to the United Nations; it only paid the net lease on the land to the original owners. This land was later acquired by the United Nations and except for the repayment of the debt incurred from other funds to purchase the land, no suggestion was made that it pay rent to the United Nations.

10. Furthermore, in the Secretary-General's recommendation to the General Assembly to transfer the UNITAR headquarters to Geneva,[80] the question of rental payment for the premises it would occupy in Geneva, at the United Nations Office at Geneva, does not seem to have been raised or addressed in the discussions preceding or leading to the decision. Besides, the report of the Secretary-General following the General Assembly resolution which decided the transfer,[81] pointed out that the financial situation of the Institute remained "very tight and fragile" and "there is serious danger of further financial difficulty" (A/48/574, para. 12). If UNITAR were to be charged rent for occupation of United Nations premises from funds contributed to UNITAR for United Nations programmes, in such a situation, this could result in reduced ability to fund vital programmes and defeat the very purpose for moving it to Geneva.

12 August 1994

45. Procedure for dealing with communications relating to violations of human rights and fundamental freedoms — Paragraph 10 of Economic and Social Council resolution 1503 (XLVII)

Opinion of the Legal Counsel of the United Nations on the "interpretation to be given to paragraph 10 of Economic and Social Council resolution 1503 (XLVIII)"

1. At its 45th session, in 1993, the Subcommission on Prevention of Discrimination and Protection of Minorities decided, by its decision 1993/104, to study at its 1994 session the question of the reform of the procedure governed by Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, "including the possible abolition of that procedure." It requested the Secretariat to prepare a working paper on the subject for consideration at that session and "to obtain the opinion of the United Nations Legal Counsel on the interpretation to be given to paragraph 10 of resolution 1503 (XLVIIII)." The present note is prepared in response to the latter request.

2. In dealing with this request, I first note that paragraph 10 of the resolution could give rise to a number of question, although the general meaning of the provision is plain enough. I have tried to identify some of these questions and to comment upon them. However, in order to make a proper analysis, I would need a more precise request. Pending such a request, I have chosen to submit the following in order to assist the Subcommission as far as possible.

3. The analysis touches upon the following questions: subject and scope of the review; the entity entitled to conduct a review; the timing of the review; the meaning of "such communication"; and the Optional Protocol to the Covenant on Civil and Political Rights[82] as distinct from the 1503 procedure.

4. Paragraph 10 of Economic and Social Council resolution 1503 (XLVIII) reads as follows:

> "10. The Economic and Social Council … decides that the procedure set out in the present resolution for dealing with communications relating to violations of human rights and fundamental freedoms should be reviewed if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement."

5. The text of paragraph 10 was proposed by Italy when draft resolution 1503 was considered by the Social Committee in 1970. The sponsor's intention was to "avoid duplication and possible contradiction in the evaluation of the admissibility of communications relating to violations of human rights and fundamental freedoms in the event that new organs entitled to deal with such communications were established, either international agreement or within the United Nations".[83] As far as the "new organs" are concerned, the sponsor referred specifically to the Human Rights Committee envisaged under the Covenant on Civil and Political Rights and its Optional Protocol, as well as the proposal to establish an Office of High Commissioner for Human Rights which was then under consideration by the General Assembly.[84] Therefore, the purpose of paragraph 10 is to provide an opportunity for review of relevant subsequent developments so as to avoid any conflict with the functions and power of any new organ that may be created in the future in that field.

(a) Subject and scope of the review

6. Paragraph 10 refers to the "procedure" set out in the resolution for dealing with "communications relating to violations of human rights and fundamental freedoms." Essentially, the 1503 procedure is a system consisting of a stage-by-stage evaluation of communications received from persons and organizations to identify serious violations of human rights which appear to reveal a consistent pattern (i.e., situation). Thus, even though the term "procedure" is used, it should however be understood to cover the entire scope of resolution 1503 (XLVIII). Originally, the 1503 procedure had a three-stage mechanism involving the evaluation first by the Working group on Communications, then the Subcommission on Prevention of Discrimination and Protection of Minorities and then the Commission on Human Rights. The Working Group on Situations was subsequently added as the third stage before the final examination by the Commission. The functions and powers of each organ in dealing with communications relating to violations of human rights and fundamental freedoms are set out in resolution 1503 (XLVIII) and other relevant resolutions (e.g., Council resolutions 1990/41 of 25 May 1990).[85] The subject and scope of the review under paragraph 10 should therefore include not only such aspects as application, admissibility and confidentiality, but also the roles and functions of the organs involved at each stage identified in the various paragraphs of resolution 1503 (XLVIIII) and other relevant resolutions, and evolved through practice during those years.

7. The competent organ itself must however decide the precise scope of a particular review under consideration, in the light of, *inter alia*, the functions and powers of the new organ concerned and its own competence.

(b) The entity entitled to conduct a review

8. The wording of paragraph 10 does not specify the entities which are entitled to conduct a review. The wording does not however preclude each of the five organs involved (i.e., the Working Group on Communication, the Subcommission of Human Rights Prevention of Discrimination and Protection of Minorities, the Working Group on Situations, the Commission on Human Rights and the Economic and Social Council itself) to initiate reviews on aspects falling within their assigned functions under the 1503 procedure. Since a subsidiary organ only has competence over functions assigned to it under the 1503 procedure, any review of an overall nature falls primarily within the purview of the Council itself. This however does not prevent it from delegating this task to the Commission or other organs. Equally, since the 1503 system was created by the Council through its resolution 1503 (XLVIII), no other organ is competent to modify it without the authorization of the Council.

9. In March 1993, the Commission on Human Rights adopted resolution 1993/58, which addressed the question of "Effective functioning of the various mechanisms established for supervision, investigation and monitoring of the implementation of the treaty obligations entered into by States in regard to human rights and of the existing international standards in this regard." The Secretary-General was requested to prepare a report to focus on six thematic areas:

(a) Original mandates assigned to the various treaty and non-treaty mechanism;

(b) International legal norms and standards on which existing non-treaty mechanism currently based their activities;

(c) Conceptual framework, methods of work and procedural rules applied by each non-treaty mechanism in the discharge of its mandate;

(d) Various norms, criteria and practices established by each existing mechanism in regard to the admissibility of communications;

(e) Preliminary consideration and evaluation of communications, their referral to the interested parties and subsequent course of action;

(f) Criteria used in practice by the Centre for Human Rights for channeling communications either to an existing public machinery or into the confidential procedure governed by Economic and Social Council resolution 1503 (XLVIII), together with the legal foundation for such criteria.

The 1503 procedure formed part of the Secretary-General's report.[86] The Commission however postponed the review to its 1995 session. In August 1993, the Subcommission, by its decision 1993/104, decided to study the question of the reform of the 1503 procedure, including the possible abolition of the procedure. The Secretariat has prepared a working paper for that purpose (E/CN.4/Sub.2/1994/17).

10. Accordingly, two organs are conducting reviews pertinent to the 1503 procedure. Is there any conflict when concurrent reviews occur? Should there be a priority, and if so, which organ should have priority? Paragraph 10 of Economic and Social Council resolution 1503 (XLVIII) provides no answer to these questions. It seems that in such a situation, the organs concerned should bear in mind the scope of their own competence in this matter and the issues of how efficiency can best be achieved.

(c) Timing for the conduct of a review

11. Another question to be considered is when a review would be in order, pursuant to paragraph 10. The condition provided for in paragraph 10 is "… if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement."

12. The word "organ" in paragraph 10 covers not only organs established within the Organization but also entities created by international agreements. The issue of review becomes pertinent for consideration when a new entity comes into existence, whether or not it is an organ within the Organization or a body under an international agreement.

13. In 1978, following the entry into force of the International Covenant on Civil and Political Rights and the Optional Protocol thereto in 1976, the Commission on Human Rights initiated a review of the 1503 procedure having regard to the coming into operation of the Human Rights Committee, a body entitled to deal with communications concerning violations of human rights under the procedure governed by the Optional Protocol. By its resolution 16 (XXXIV), the Commission requested the Secretary-General to prepare an analysis of existing United Nations procedures for dealing with communications concerning violations of human rights "to assist the Commission in studying measures to avoid possible duplication and overlapping of work in the implementation of these procedures." The requested analysis was prepared and submitted to the Commission the following year in 1979.[87] Subsequently, the Commission did not take any specific action in that regard.

14. Since 1979, no specific review has been conducted in respect of resolution 1503 (XLVIII) even though two further procedures for dealing with communications have come into existence. In this regard, the following may be mentioned as they are empowered to deal with complaints about alleged violations of the provisions of the respective United Nations international human rights treaties:

— The procedure governed by article 22 of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;[88]

— The procedure governed by article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.[89]

It may also be mentioned that the procedure governed by article 77 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families[90] also provides for the consideration of communications (the Convention is not yet in force).

15. By its resolution 48/141, the General Assembly decided, *inter alia*, to create the post of United Nations High Commissioner for Human Rights. Paragraphs 3 and 4 of that resolution set out the responsibilities and functions of the High Commissioner. While the Office of the United Nations High Commissioner for Human Rights is a "new organ," the question whether a review is called for under paragraph 10 of resolution 1503 (XLVIII) depends, *inter alia*, on whether the High Commissioner is entitled to deal with "communications relating to violations of human rights and fundamental freedoms" within the meaning of resolution 1503. The Office of Legal Affairs does not possess sufficient information at this stage to provide a clear answer on this issue.

16. The words "should be reviewed" in paragraph 10 of resolution 1503 (XLVIII) suggest that initiation of a review is not automatic or mandatory, which means that the component organ concerned enjoys a certain degree of discretion as to when it should initiate a review. This interpretation is confirmed by the drafting history of paragraph 10.[91]

(d) Meaning of "such communications"

17. The words "such communications" in paragraph 10 refer to "communications relating to violations of human rights and fundamental freedoms." Here guidance could first be sought in procedures for dealing with the question of admissibility of communications embodied in subcommission resolution 1 (XXIV). These procedures set out: (i) standards and criteria; (ii) source of communications; (iii) contents of communications and nature of allegations; (iv) existence of other remedies; (v) timeliness. If admissible, such communications (together with the replies received from governments thereon) are evaluated by the organs concerned in order to determine whether they reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. With this procedure and the legislative history of the 1503 procedure in mind, any review would have to make an evaluation of the corresponding procedures applied by "new organs." In this respect, the review might also consider procedures applied by organs operating at the regional level.

(e) Optional Protocol to the Covenant on Civil and Political Rights as distinct from the 1503 Procedure

18. According to paragraphs 1 and 2 of resolution 1503 (XLVIII) communications "received" under Economic and Social Council resolution 728 F (XXVIII) and in accordance with Council resolution 1235 (XLII) are to be channeled into the 1503 procedure.

19. The 1503 procedures is of a confidential nature in that all communications received thereunder are subject to the rule of confidentiality stated in paragraph 8 of resolution 1503 (XLVIII).[92] Communications under the Optional Protocol are treated as confidential, but the views of the Human Rights Committee and decisions of a final nature (e.g., decisions declaring communications inadmissible) are made public, after they have been communicated to the parties concerned.

20. The Optional Protocol procedure, which deals with individual complaints, is applicable only in respect of States that are parties to the Protocol and the content of a communication is limited to those rights specified thereunder (i.e., civil and political rights). The 1503 procedure, concerned with the examination of violations constituting a pattern, is applicable with regard to all States and covers communications from any individual, group of individuals or non-governmental organization. The content that may form part of a communication is very broad covering all human rights recognized in the Universal Declaration of Human Rights. This distinction should be borne in mind when the aspect of duplication is discussed.

21. Since 1979, a practical working method has been adopted by the Secretariat with the tacit approval of the Commission, to avoid possible duplication of communications under the Optional Protocol and the confidential procedure under resolution 1503 (XLVIIII).[93]

12 August 1994

46. Subsidiary organs — Question whether the United Nations Development Programme, United Nations Population Fund and United Nations Children's Fund Executive Boards are subsidiary organs of the Economic and Social Council or of the General Assembly — Chapters IX and X of the Charter

Memorandum to the Director, Division of External Relations, and Governing Council Secretariat

…

2. Your question is whether in the light of General Assembly resolution 48/162, "the recently established UNDP/UNFPA Executive Board is a subsidiary organ of the Economic and Social Council or of the General Assembly". You indicated that "there seems to be no doubt in anyone's mind that the UNICEF Board is a subsidiary of the Economic and Social Council…"

3. UNICEF was established by the General Assembly in its resolution 57(I) of 11 December 1946. The resolution provides in paragraph 3(a): "The Fund shall be administered by an Executive Director under policies, including the determination of programmes and allocation of funds, established by an Executive Board in accordance with such principles as may be laid down by the Economic and Social Council and its social commission." Furthermore, while specific countries were named in the resolution as composing the Board, the Economic and Social Council was given the authority to designate other Governments as members of the Board.

4. In order to determine the actual role of the General Assembly and the Economic and Social Council, it is important to refer to Chapters IX and X of the Charter of the United Nations. The responsibilities of the United Nations for international economic and social cooperation are provided for in Article 55, and Article 60 states:

> Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X."

In addition to the specific functions relating to initiating studies and making recommendations to the General Assembly in respect to international economic, social, cultural, educational, health and related matters (Article 620), the Economic and Social Council is to perform functions "within its competence in connection with the carrying out of the recommendations of the General Assembly and, *inter alia*, as may be assigned to it by the General Assembly (Article 66, paragraph 3)."

5. For the performance of its functions, the General Assembly is authorized to establish "subsidiary organs as it deems necessary." Article 68 authorizes the Economic and Social Council to "set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions."

6. On the basis of the above analysis, there is no doubt that UNICEF is a subsidiary body of the General Assembly, but that the Assembly delegated much of its functions to the Economic and Social Council, including the approval of the UNICEF programmes and estimated expenditures. Paragraph 7 requires the Board to make "periodic reports of its operations, at such times and in such form as the Economic and Social Council shall provide." In this respect, the Council may have exercised more oversight over the activities of UNICEF and its Board than was the case for UNDP, but this did not alter the fact that UNICEF was a subsidiary organ of the General Assembly.

7. As you know, the establishment of UNDP can be traced back to General Assembly resolution 1240 (XIII), which established the Special Fund. It was provided in that resolution that "the Special Fund shall be an organ of the United Nations administered under the authority of the Economic and Social Council and of the General Assembly, which will exercise in respect of the Fund their powers under the Charter".[94] The resolution also provided that "the Economic and Social Council shall be responsible for the formulation of the general rules and principles which will govern the administration and operations of the Special Fund; the review of the operations of the Fund on the basis of the annual reports to be submitted by the Governing Council." With regard to the report of the Governing Council, paragraph 10 of the resolution provides that "the Economic and Social Council shall transmit the report of the Governing Council, together with its own comments, to the General

Assembly. The Assembly will review the progress and operations of the Special Fund as a separate subject of its agenda and make any appropriate recommendations." This function was continued in respect of UNDP and its Governing Council until the 48th session of the General Assembly.

8. It was also provided in resolution 1240 (XIII) that the immediate intergovernmental control of the policies and operations of the Special Fund shall be exercised by a Governing Council. The powers and functions of the Governing Council was to "provide general policy guidance on the administration and operations of the Special Fund." It had "final authority for the approval of the projects and programmes recommended by the Managing Director" and reviewed "the administration and execution of the Fund's approved projects", and could "submit reports and recommendations" as deemed appropriate.

9. When the Special Fund was merged with the Expanded Programme of Technical Assistance to form UNDP by the General Assembly in its resolution 2029 (XX) of 22 November 1965, a single intergovernmental committee known as the Governing Council of UNDP was established "to perform functions previously exercised by the Governing Council of the Special Fund and the Technical Assistance Committee including the consideration and approval of projects and programmes and the allocation of funds"; in addition it provided "general policy guidance and direction for the United Nations Development Programme as a whole as well as for the United Nations regular programmes of technical assistance."[95]

10. It was also provided that the Governing Council of UNDP "shall meet twice a year and shall submit reports and recommendations thereon to the Economic and Social for consideration by the Council at its summer session." The members of the Governing Council were to be elected by "the Economic and Social Council."

11. The recent General Assembly resolution 48/162 on the restructuring and revitalization of the United Nations in the economic and social and related fields has affected the governance of both UNDP and UNICEF. The most striking change is the reaffirmation of the principal and increased role of the General Assembly. It should be noted that paragraph 11 provides that "the General Assembly is the highest intergovernmental mechanism for the formulation and appraisal of policy on matters relating to the economic, social and related fields in accordance with Chapter IX of the Charter." Furthermore, the powers of the Economic and Social Council seem to have been enhanced with corresponding effects on the roles of the Executive Boards in policy matters. The Council is to provide coordination and guidance "so that policies formulated by the Assembly, particularly during the triennial policy review of operational activities, are appropriately implemented on a system-wide basis."[96] The Executive Boards are to provide "intergovernmental support to and supervision of the activities of each fund or programme in accordance with the overall policy guidance of the Assembly and the Council…" The Boards are subject to the authority of the Council. The Executive Boards submit their annual reports to the Council at its substantive session. It appears that there is no longer any separate consideration by the Assembly of the report of the Executive Board of UNDP and UNFPA.

12. This is a roundabout way of answering your question but at the current stage this is all one can do. A definitive legal opinion would have to be provided by the Legal Counsel at the request of the intergovernmental bodies themselves should this be an issue. On above analysis, however, it is clear that the role of the Economic and Social Council has been enhanced in terms of providing policy guidance to the various funds and programmes. But the Council operates under the overall supervision of the General Assembly, which has reserved to itself the role of policy formulation.

13. In spite of the changes which have resulted from the restructuring of the economic and social sector and the direct supervision of the work of the Board by the Council, it seems that in law, both UNICEF and UNDP remain subsidiary organs of the General Assembly, and not of the Economic and Social Council, under Articles 7 and 22 of the Charter of the United Nations.

22 August 1994

47. Nominations to the Advisory Committee on Administrative and Budgetary Questions — General Assembly resolution 47/1 of 22 September 1992

Memorandum to the Secretary of the Fifth Committee

1. I refer to your inquiry of 13 October 1994 transmitted to this Office concerning what effect should be given to the note verbale to the Secretary-General submitted by the Permanent Representative of Yugoslavia informing him that "Mr. — is a candidate for re-election" to the membership of the Advisory Committee on Administrative and Budgetary Questions.

2. Neither the initial General Assembly resolution 14(I)A of 13 February 1946 on the establishment of the Advisory Committee nor subsequent resolutions on the enlargement of the membership of the Committee contain explicit procedures on the nominations of candidates for election to the Committee.

3. In accordance with the clearly established practice, however, candidates are nominated by governments for appointment or reappointments to the Advisory Committee. This is indicated by the fact that at the first election of members of the Committee held during the second part of the first session of the General Assembly, on 12 November 1946, the Chairman of the Fifth Committee stated: "Each *delegation* had been asked to submit a list of one to nine names, which had made possible the drawing up of a list of candidates" (A/C.5/63, emphasis added). Furthermore, at the recently concluded forty-eighth session, the report of the Fifth Committee to the plenary of the Assembly on appointment of members of the Advisory Committee stated: "The Fifth Committee also had before it a note … containing the names of … persons *nominated by their respective Governments* for appointment or reappointment …" (A/48/692, emphasis added).

4. Thus, Mr. … may not nominate himself or declare his candidacy, either through a communication of his own or through one of the State of which he is a national. He must be nominated by a Member State.

5. If the note verbale submitted by Yugoslavia constitutes a nomination, such a nomination would not be received in the light of General Assembly resolution 47/1 of 22 December 1992. Pursuant to that resolution, the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the General Assembly. Nominating candidates for appointment or election by the General Assembly is part of the election procedure — the work — of the General Assembly. Accordingly, candidatures nominated by the Government of the Federal Republic of Yugoslavia for General Assembly election or appointment are not receivable and the names of any candidates submitted by Yugoslavia should not appear in any Assembly document.

6. A note to the above effect should be addressed to the Permanent Representative of Yugoslavia.

17 October 1994

48. Succession in the membership of the International Cocoa Organization — Succession of States in respect of State property — 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts

Letter to the Executive Director, International Cocoa Organization

I wish to refer to your letter of 14 October 1994, which was received by this Office on 24 October 1994. In the letter, pursuant to the request of the eighteenth special session of the International Cocoa Council, hereinafter referred to as the "Council," you seek the advice of this Office with regard to the question of "whether the Russian Federation should be the sole recipient of the share of the proceedings of buffer stock liquidation to which the former USSR would have been entitled."

In connection with that request, we took note of the information contained in your letter according to which, in February 1992, the Council was informed by the Russian Federation that it had succeeded to the membership of the former USSR in the International Cocoa Organization and that since that time the Russian Federation had honored all obligations of the former USSR under the 1986 Agreement until its termination on 30 September 1993. We also took note of the fact that the payment of the levy for financing the buffer stock under the 1986 Agreement was discontinued in April 1990, when the USSR was still a party to that Agreement.

The question addressed to this Office relates to the issue of succession of States in respect of State property of the predecessor State. The only existing general legal instrument in this area is the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts.[97] Under that Convention the term "State property" is defined as property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State (article 8).

The 1983 Convention is not yet in force and the USSR was not a contracting State. So far the Convention has acquired only 10 out of the 15 ratifications or accessions required for its entry into force. However, as was pointed out in our previous correspondence the principles embodied in some of its articles seem to accord with the practice followed in cases of succession of States. It is also worth mentioning that three States, former republics of the USSR, namely Estonia, Ukraine and Georgia, recently acceded to the Convention, on 21 October 1991 and 8 January and 12 July 1993, respectively.

Article 17 of the 1983 Convention addresses the issue of succession of States in respect of State property in cases of "Separation of part or parts of the territory of a State" and provides as follows:

"1. When part or parts of the territory of a State separate from that State and form a successor State, and unless the predecessor State and the successor State otherwise agree:

"(a) Immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

"(b) Movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

"(c) Movable State property of the predecessor State, other than that mentioned in subparagraph (b), shall pass to the successor State in an equitable proportion.

"2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

"3. The provisions of paragraphs 1 and 2 are without prejudice to any question of equitable compensation as between the predecessor State and the successor State that may arise as a result of a succession of States."

The text of article 17 was adopted by the Committee of the Whole of the 1983 Vienna Conference by 46 votes to none, with 17 abstentions. In its commentary on the draft Convention submitted for the consideration of the 1983 Conference, the International Law Commission pointed out that the reference to equity in paragraph 1(c) of draft article 16 (subsequently article 17 of the Convention) was "a key element in the material content of the provisions regarding the distribution of property which thus has the character of rule of positive international law."

Article 17 of the 1983 Convention contains general provisions regarding succession of States in respect of State property in cases of separation of part or parts of the territory of a State. However, those provisions do not automatically entitle a successor State to property rights under an international treaty. First, it should be determined what is the position of a successor State as regards an international treaty in force for the predecessor State. Second, the text of an international treaty should be examined to find out whether it has any special provisions which might relate to the acquisition of property rights by a successor State.

The only general international instrument which addresses the issue of succession to international treaties is the 1978 Vienna Convention on Succession of States in Respect of Treaties.[98] Article 34 of that Convention entitled "Succession of States in cases of separation of parts of a State," provides the following:

"1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

"(a) Any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

"(b) Any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.

"2. Paragraph 1 does not apply if:

"(a) The States concerned otherwise agree; or

"(b) It appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation."

The 1978 Convention has not entered into force and the USSR was not a party to it. Following the breakup of the USSR, this Office undertook a review of the legislative history of the 1978 Convention and the general practice of States regarding the succession in respect of treaties. That review led us to the conclusion that it is doubtful whether the Convention codifies existing rules of customary international law and that there is no clear rule of general international law governing the succession of States in respect of treaties in cases of separation of parts of that State, because the practice of successor States is not uniform.

In the light of the foregoing, it appears that as far as the issue of succession to treaties is concerned, the following two options are open to successor States:

The new States could address a notification of succession to the depositary of the international treaty in question. It should be noted in this respect that the practice of many newly independent States has been to address to the Secretary-General a statement to the effect that, pending a review on their part of the treaties in force for the predecessor State, it should be presumed that each such treaty has been succeeded to by the newly independent State and that action should be based on this presumption until a decision is reached that the treaty should be regarded as lapsed. The Secretary-General does not consider such statements as sufficient to list the new States as parties to treaties deposited with him, and requires a declaration of succession indicating to which specific treaties the States are succeeding.

Another option, which may be used in cases of multilateral treaties to which the Secretary-General serves as depositary, is to address a general notification to the depositary clarifying that all treaties in force for the predecessor State shall be continued by the successor State concerned.

It should be emphasized in this regard that a successor State's inaction cannot be construed as an expression of consent on its part to succeed to the treaty in question. It should also be observed that although it is difficult to give a precise answer to the question concerning the period of time within which a new State should communicate its intention to succeed to a treaty, in the interest of the stability of treaty relations, a successor State should not wait too long to communicate its intention.

It is our understanding that, so far, the first option has not been used by the new States, former republics of the USSR. The Baltic States take a position that they were never lawfully part of the Soviet Union and therefore cannot be considered as successor States to the USSR. Other States, former republics of the USSR, have expressed their consent to be bound by international treaties through the deposit of instruments of accession, rather than succession. Thus, they have become new contracting parties to international treaties through the process of accession and not as successors to the USSR.

No State which is a former republic of the USSR has opted for the second alternative either. None of them have submitted to the Secretary-General a general notification on the continuity of the application of the treaties in force for the USSR. The only exception is a position taken by Ukraine regarding its participation in the international organizations in which the USSR was a member. On 6 February 1992, the Minister for Foreign Affairs of Ukraine addressed a letter to the Secretary-General stating the following:

> "Having regard to the norms and principles of international law and its own domestic legislation in the field of succession, Ukraine declares that it is a successor of the former USSR with respect to membership in international

organizations in which the Ukrainian Soviet Socialist Republic, as a constituent part of the USSR, did not participate. Proceeding from its domestic political interests, national priorities and practical expediency, Ukraine can raise the question concerning membership in such organizations in accordance with existing international procedure."

In summation, it should be pointed out that the new States which are former republics of the USSR are successor States to the former Soviet Union and as such they are entitled under international law to its property located outside that country. Such property should be passed to the successor States in equitable portions. However, as was noted above, in cases where a predecessor State acquired property rights through its membership in a multilateral treaty, such rights are not automatically transferred to a new State or States and in order to acquire these rights such States should become contracting parties to that treaty through succession. No new State which is a former republic of the USSR had submitted a notification of succession with regard to the 1986 International Cocoa Agreement prior to its termination on 30 September 1993. Therefore, strictly legally speaking, these States did not establish under article 38 of that Agreement their eligibility to the share of the proceeds of buffer stock liquidation to which the former USSR would have been entitled.

At the same time, this Office is of the view that in this particular case there are special circumstances which should be taken into account. It goes without saying that the time period which elapse between the acquisition of statehood by the new States which are former republics of the USSR and the termination of the 1986 Cocoa Agreement was very short. A presumption can be made that some of these States were simply unaware of their potential rights under that treaty and therefore did not use in time the opportunities which were open to them. We took note in time the opportunities which were open to them. We took note in this connection of the fact that at the time of the consideration by the International Cocoa Council of distribution of the buffer stock liquidation proceeds a representative of the Russian Federation had informed the Council that the Russian Federation and the new States that were former republics of the USSR had entered into arrangements regarding the rights and obligations of the former Soviet Union. In view of that statement, the Council may wish to ask the Russian Federation to confirm in writing that should the Council decide to make the payment of the share of the proceeds of the buffer stock liquidation, to which the former USSR would have been entitled, to the Russian Federation, the latter would assume the responsibility of resolving any issue of property rights of the former republics to the portions of this share through its bilateral arrangements with those new States in accordance with the applicable principles of international law. Should the Council take such a decision, it may also wish to instruct the Secretariat of the International Cocoa Agreement to inform the former republics of the USSR of the decision.

10 November 1994

PROCUREMENT

49. LEGAL REGIME OF THE CHARTER OF AIRCRAFT — UNITED NATIONS STANDARD AIR CHARTER AGREEMENTS — QUESTION OF WHETHER UNITED NATIONS AIRCRAFT CHARTER STANDARD FORMS CAN BE USED TO OBTAIN SCHEDULED INTERNATIONAL AND TRANSPORT SERVICES

Memorandum to the Chairman, Committee on Contracts

1. This is with reference to Purchase and Transport Services case [number of case], which was reviewed by the Contracts Committee at its 10 may 1994 meeting, regarding the bid submitted by Japan Airlines (JAL), for the rotation of the Japanese contingent from Maputo to Tokyo. The invitation for bids issued by the United Nations included the following provisions:

> "1. The United Nations requests your all-inclusive bid in accordance with the requirements attached hereto as Annex A …"
>
> "…
>
> "3. The United Nations invites bids from qualified and duly certified carriers/operators for provision of aircraft charter services for use by the United Nations for its peacekeeping mission as provided in this invitation to bid. The successful bidder will be required to conclude an agreement with the United Nations on the basis of the attached Annex B, United Nations Standard Aircraft Charter Agreement (#CA-4) and the attached Annex C, United Nations General Conditions for Air Charter (#GC-2)."

2. Paragraph 1 of Annex A of the invitation for bids specifies as follows:

> "Air Transportation Services *by charter and/or scheduled flights* for the rotation of contingents for the United Nations Operation in Mozambique (ONUMOZ) as shown on the attached Annex A-2 'Comments by serial' …" (emphasis added).

3. We understand, from the explanations given by the Field Operations Division and Purchase and Transport Service representatives at the Contracts Committee meeting, that the bid submitted by JAL was for carriage of the troops on JAL scheduled flights.

…

5. We wish to note, firstly, that the charter of an aircraft on the one hand, and obtaining regular tickets for carriage by a scheduled airlines on the other hand, are two very different transactions in nature. Under the charter, the charterer has the right to the exclusive use of the carrying capacity of the aircraft for the movement of persons and their baggage or for the movement of property, on a time, mileage or trip basis, while carriage by scheduled airlines involves transportation of persons and their baggage under scheduled fares, times and destinations, in such a manner that each flight is open to use by members of the public.

6. There are, correspondingly, differences in the legal regime to which each of these two types of transactions is subject, at both the international and national level. For example, the Chicago Convention makes the difference between scheduled and non-scheduled international air transport and its article 5 addresses specifically the case of non-scheduled international air transport. Similarly, non-schedule air transport, including charter, has been regulated by a variety of bilateral or multilateral arrangements between States (for instance, the Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe, opened for signature in Paris on 30 April 1956).

7. The United Nations standard air charter agreement and general conditions have been developed by this Office, in consultation with ICAO and members of the airlines industry, specifically for use for the charter of aircraft. They provide for the United Nations exclusive use of the aircraft load and for performance of the carrier's services in accordance with a schedule agreed upon between the carrier and the United Nations, and with United Nations' instructions. Many of their other provisions have no equivalent in the legal regime applicable to regular ticket carriage by scheduled airlines.[99]

8. In the light of the above, we strongly advise against the use of the United Nations aircraft charter standard forms to obtain scheduled international air transport service. In addition to the confusion that would result from the intermingling of two modes of carriage which differ in nature and in law, this would create, in case of any controversy or dispute during the implementation of the air transport services, inextricable difficulties in reconciling and determining the applicability of the provisions of the air charter agreement between the carrier and the United Nations, the provisions on the regular passenger ticket which the carrier would issue to each of the passenger carried on its schedule flights, which provisions would constitute a contract between the carrier and each such passenger, and the international and national regulations applicable to, respectively, scheduled airlines and charter. We have had cases in the past where United Nations personnel died in a plane crash and the question was raised whether the terms of a contract between the United Nations and an airlines could override the limits of liability on a ticket issued to the passenger.

9. We understand that during the discussions on this matter at the Contracts Committee meeting, the representatives of the Field Operations Division stated that they considered it necessary that the United Nations be able to obtain, on the open market, carriage services on scheduled flights, in particular when the number of troops to be transported was not sufficient to make the charter of aircraft(s) a rational and economical option.[100] We would have no problem accepting this rationale but this would require a different contractual regime from the charter. We will need to work in consultation with ICAO, with members of the airlines industry and the Purchase and Transportation Service, as we have done previously in respect with the charter modality, to design an acceptable contractual document against which bids can be made. Essentially, the United Nations is interested in maintaining the increased limits of liability insurance, provisions regarding delayed and canceled flights, termination, arbitration and privileges and immunities clauses in the United Nations General Conditions. It may very well be that a special passenger ticket, which would be subject to provisions similar to the above-mentioned ones found in the United Nations General Conditions, would have to be issued to each individual passenger. We would be glad to review a proposed draft along these lines.

10. In the meantime and in order to deal with this particular case alone, we suggest that JAL should be requested to provide the United Nations with a revised passenger ticket providing for the limits of liability specified in the General Conditions enclosed with the invitation for bids, and to sign an agreement with the United Nations which includes said General Conditions. The above-mentioned revised passenger ticket should be issued to each individual passenger carried under the agreement.

17 May 1994

50. Interpretation of United Nations financial rule 110.20 — Meaning of the term "publicly opened" as applied to bids — General procurement practice

Memorandum to the Officer-in-Charge, Purchase and Transportation Service, Office of General Services

1. This is with reference to your memorandum dated 25 July 1994, by which you requested our advice on the proper interpretation and application of United Nations financial rule 110.20 and, specifically, whether Purchase and Transport Service practice to invite only representatives of bidders to a bid opening is consistent with United Nations financial rule 110.20, or whether the rule requires that members of the general public, including representatives of the media, should also be allowed access to the bid opening, if they so request. You also asked what written material relating to tendering may be disclosed to members of the general public. Please find below our comments and suggestions.

Public opening of bids

2. Financia l rule 110.20 reads as follows:

"All bids shall be publicly opened at the time and place specified in the invitation to bid and an immediate record made thereof."

3. The plain meaning of the term "publicly opened" would be that the bid opening must be public, i.e., that access to bid opening should not be restricted or limited to any particular group or class of persons. However, if the term was to be strictly interpreted in the context of the rule's primary purpose, which is to afford bidders the opportunity to observe the bid opening so as to protect them against any fraud, favoritism or partiality and leave no room for suspicion of irregularity, it could be given the limited content of article 31(2) of the UNCITRAL Model Law on Procurement,[101] which provides that:

> "All suppliers or contractors that have submitted tenders, or their representatives, shall be permitted by the procuring entity to be present at the opening of tenders."

We believe that the practice of the Purchase and Transportation Service is consistent with general procurement practice as reflected in the above-quoted provision of the Model Law.

4. Nevertheless, we are constrained to give some effect to the world "publicly," and therefore in our view there would be no basis under rule 110.20 for not allowing persons lawfully present on United Nations premises, including representatives of the media, to attend a bid opening, if they so requested.

Information to be made available to persons other than representatives of bidders

5. We shall shortly send you a copy of a memorandum to the Director of the Building and Commercial Services Division, by which we are proposing a draft administrative instruction containing draft procurement procedures which we prepared on the basis of the UNCITRAL Model Law on Procurement of Goods, Construction and Services. Article 6 of those proposed procurement procedures, entitled "Records of procurement proceedings" and based on the corresponding article 11 of the UNCITRAL Model Law, addresses in its paragraph 6.2 and, by reference, its subparagraphs 6.1(a) and (b), the question of information to be made available, on request, to any person.

6. Under the above-mentioned provisions, the following part of the records of procurement proceedings would have to be made available, on request to any person after a tender, proposal or quotation, as the case may be, has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract:

— A brief description of the goods or construction or services to be procured, or of the procurement need for which the procuring entity requested proposals;

— The names and addresses of suppliers or contractors that submitted bids, proposals or quotations, and the name and address of the supplier or contractor with whom the procurement contract is entered into and the contract price.

7. The part of the records of procurement proceedings to be made available to firms that submitted bids, proposals or quotations is more extensive, and will be covered by article 6.3 and, by reference, articles 6.1(c) to 6.1(g) and 6.1(k) of the proposed draft procurement procedures (corresponding to articles 11.3 and, by reference, article 11.1(c) to 11.1(g) and 11.1(k) of the UNCITRAL Model Law).

29 July 1994

51. Conditions for United Nations Acceptance of voluntary contributions of assistance from Member States

Memorandum to the Officer-in-Charge, Department of Humanitarian Affairs

1. Reference is made to your 27 July 1994 memorandum requesting our advice on whether a Government's proposal to provide humanitarian assistance to the United Nations demobilization efforts in Angola in the mode of a grant contribution, of in-kind services, is acceptable.

…

3. Section (a) below contains our general comments on the appropriate modalities for the United Nations acceptance of voluntary contributions of assistance from Member States.

(a) General comments

4. Provided that the acceptance of such a contribution does not involve additional financial liability for the Organization, financial regulation 7.2 provides that voluntary contributions, whether or not in cash, may be accepted by the Secretary-General if the contribution is consistent with United Nations policies, aims and activities.

5. To our knowledge, heretofore voluntary contributions to the United Nations by Member States have normally been in the form of cash to a United Nations Trust Fund or, if in kind, in the form of goods or equipment. An exception to this traditional mode of making voluntary contributions has been the modality under the Cooperation Service Agreement, such as was used in respect of the UNDP demining programme in Cambodia, where the voluntary contribution took the form of the donor Government's personnel providing services directly to the Organization.

6. The Government's proposal constitutes a further deviation in modality for the provision of voluntary, in-kind contributions. Under the terms of the proposed Grant Agreement, the United Nations would receive no cash, nor any goods or equipment. Instead unlike the case in which Member States provide the services of their personnel directly to the United Nations, the United Nations would be the beneficiary of a contract for services between the government agency and [name of corporation]. This modality gives rise to certain concerns that the in-kind voluntary assistance being offered might in effect be viewed as "tied procurement," in that the Organization would be offered a grant expressly providing that the grant be utilized to retain a particular contractor selected by the Member State.

7. In our view, an assistance modality pursuant to which the donor selects a contractor and where the United Nations is largely a passive beneficiary of services requires a policy decision, in this case by the Under-Secretary-General for Administration and Management who has the delegated authority for ensuring that voluntary contributions conform to the Financial Regulations and Rules of the United Nations. Moreover, we think the decision of the Under-Secretary-General for Administration and Management on the proposed modality is also necessary because of our further concern that acceptance of the Contractor might result in the United Nations having less control over the effective delivery of the services, as the contractor and its personnel would be selected, controlled and paid directly by the government agency.

8. It would be far more desirable for a donor to provide the United Nations directly with funds conditioned to be used for a specific purpose, so that the United Nations might thereafter decide, in accordance with its own rules and procedures, to obtain the appropriate contractor to provide the required services or equipment. Consideration can be given to meeting any urgent requirements (we understood there was an urgent need for the demobilization services) by engaging the contractor under an exception to the calling of competitive bids or requests for proposals under financial rule 110.19.

12 August 1994

SECURITY COUNCIL ISSUES

52. Question of whether export of freon gas to Iraq would constitute a violation of the Montreal Protocol on Substances that Deplete the Ozone Layer — Security Council resolutions 661 (1990) and 687 (1991) — Functions of the depositary; article 20 of the Vienna Convention on the Law of Treaties

Telefax to the Programme Office/Lawyer, Ozone Secretariat, United Nations Environment Programme, Nairobi

This is with reference to your telefax dated 31 May 1994, in which you point out that the export of 500,000 units of freon gas to Iraq, authorized on 15 March 1994 by the Security Council Committee established by resolution 661 (1990), would constitute a violation by the exporting State of article 4 of the Montreal Protocol on Substances that Deplete the Ozone Layer,[102] unless Iraq becomes party to the Vienna Convention for the Protection of the Ozone Layer[103] and the above-mentioned Protocol before the intended export takes place. You suggest that the Secretary-General, as depositary of the Convention, should bring the alleged violation to the attention of the Security Council and Iraq.

As you know, Iraq is subject to a comprehensive economic and financial embargo imposed by the Security Council with resolution 661 (1990). Pursuant to paragraph 20 of Security Council resolution 687 (1991), the prohibitions contained in resolution 661 (1990) do not apply, *inter alia*, to "materials and supplies for essential civilian needs." The supply of such materials or supplies, however, must be approved on a case-by-case basis by the 661 Committee; the document attached to your communication is in fact the letter of approval by the Chairman of the Committee for the intended supply of freon gas.

Under its mandate as spelled out in resolutions 661 (1990) and 687 (1991), it is not the task of the Committee to ensure that exports to Iraq are in conformity with international conventions. Under the relevant Security Council resolutions, the Committee has only to be satisfied that products to be supplied fall within the category of "essential civilian needs" (which is largely left to the discretion of Committee members) and that the intended transactions do not otherwise violate the mandatory sanctions against Iraq. It would indeed be regrettable if the transaction in question constituted a violation of the Montreal Protocol. However, neither the Security Council nor its Sanctions Committee are called to monitor the implementation of that instrument.

As to your suggestion that the Secretary-General, as depositary of the Vienna Convention and the Montreal Protocol, should bring the alleged violation to the attention of the Security Council and Iraq, I note that neither instrument contains provisions under which the depositary should raise the issue of alleged violations of the Protocol. Article 20 of the Vienna Convention, in particular, which spells out the functions of the depositary, is silent in this respect. I have inquired with the Treaty Section of this Office, and they confirm that the depositary is not called upon by the instrument in question to discharge such functions. In my view, it is rather the responsibility of the substantive secretariat to raise with the party concerned, i.e., the State concerned, the alleged violation in question. The substantive secretariat, if it

deems it advisable, could also raise the issue with Iraq pursuant to article 12(E) of the Protocol, under which the secretariat shall "encourage non-parties … to act in accordance with the provision of this Protocol".

In any case, however, for the reasons mentioned above, I am of the view that the episode reported by you does not fall within the competence of the Security Council and should not be brought to its attention.

3 June 1994

53. Status of the "United Nations Command" in Korea — Security Council resolution 84 (1950) of July 1950

Memorandum to the Under-Secretary-General for Political Affairs

1. This is with reference to your memorandum dated 13 June 1994 submitting for our review a draft letter of the Secretary-General in reply to the communication dated 28 May 1994 from the Minister for Foreign Affairs of the Democratic People's Republic of Korea. You specifically requested whether the wording used in the draft letter regarding the role of the Security Council in relation to the "United Nations Command" was appropriate. In a more general context, you sought our guidance as to the responsibility of any United Nations organ for the creation and/or dissolution of the "United Nations Command".

2. We would suggest that the wording used in the draft letter regarding the role of the Security Council in relation to the "United Nations Command" be advised to conform as closely as possible to the language of Security Council resolution 84 (1950) of 7 July 1950. Under paragraph 3 of that resolution, the Security Council recommended that all Members providing military forces and other assistance to the Republic of Korea "make such forces and other assistance available to a unified command under the United States of America". It follows from this that the Security Council did not establish the unified command but recommended the constitution of such a command specifying that it be under the United States. In other words, the military command of the operation in Korea was to be conducted under the control and authority of the United States. The status of the unified command and in particular the link between such command and the United Nations, has been extensively reviewed by this Office in briefing notes addressed to the Secretary-General.

3. As to responsibility of any United Nations organ for the creation and/or dissolution of the unified command, we would also refer to the analysis made in the enclosed briefing notes, from which it clearly emerges that the so-called "United Nations Command" is a misnomer. The Security Council recommended that the forces provided by Member States be made available to a unified command placed under the authority of the United States. Clearly, the Security Council did not establish the unified command as a subsidiary organ under its control. Therefore, the creation and/or dissolution of such command does not fall within the responsibility of any United Nations organ such as the Security Council but rather within that of the United States Government.

4. The unified command in the Republic of Korea is similar to the allied military coalition set up in the Gulf war inasmuch as it is an authorized use of force by individual States rather than an enforcement action under the command and control of the United Nations. The difference between Korea and the Gulf coalition is that the Security Council in the former case authorized the use of the United Nations flag and emblem. You will note that, in resolution 84 (1950), the Security council clearly determined that "the armed attack upon the Republic of Korea by forces from North Korea constitute[d] a breach of the peace". By virtue of that determination and the recommendation concerning the constitution of a unified command under the United States, the Security Council authorized the use of force in the Republic of Korea. It also authorized the unified command under resolution 84 (1950) to use at its discretion the United Nations flag "in the course of operations against North Korean forces concurrently with the various nations participating". However, and as indicated in the enclosed briefing notes, there was no United Nations involvement in the conduct of military operations and no United Nations budget for the unified command. The flying of the United Nations flag in the Republic of Korea is not related to any United Nations activities or programmes but is rather a relic of Security Council resolution 84 (1950). As the Security Council authorized the use of force and the United Nations flag in the context of the operation in Korea, it could also withdraw such authorization.

In the light of the above, while the creation and/or dissolution of the unified command falls within the responsibility of the United States Government, the authorization and/or withdrawal of the use of force and United Nations flag and emblem in the context of the operation in Korea falls within the competence of the Security Council.

16 June 1994

54. Resolutions under Chapter VII adopted by the Security Council — Practice of the Council

Memorandum to the Special Adviser to the Secretary-General

1. This is in reply to your note dated 16 November 1994 addressed to the Legal Counsel. You seek our views as to whether the adoption of a resolution under Chapter VII of the Charter of the United Nations must be indicated explicitly in its text, or whether this can be deduced from other factors.

2. This Office has always taken the position that in view of the consequences that flow from the adoption of a resolution under Chapter VII of the Charter, this determination must result from clear and incontrovertible textual elements in the resolution and cannot be based on "circumstantial evidence" left to the interpreter to ascertain.

3. The practice of the Security Council confirms that, when the Council has intended to place its resolutions within the purview of Chapter VII, it has so indicated through the following textual elements, which can appear jointly or alternatively:

(*a*) A statement, usually in the preamble, that the Council is acting under Chapter VII of the Charter (e.g., resolutions 253 (1968); 418 (1977); 794 (1992);

(*b*) A statement that the Council is acting under one of the Articles contained in Chapter VII (e.g., resolutions 54 (1948); 598 (1987); 660 (1990);

(*c*) A determination that a certain situation constitutes a threat to the peace, breach of the peace or act of aggression (e.g., resolutions 83 (1950); 221 (1966)). It should be noted that, in a number of resolutions, the Council has used similar but less definitive expressions which aimed at giving a particular political weight to the demands made by it while falling short of a clear determination under Article 39. Reference can be made to resolutions 132 (1960), in which the Council stated that "the situation in South Africa is seriously disturbing international peace and security".

4. An apparent exception to the foregoing is resolution 665 (1990), in which the Council called upon Member States cooperating with the Government of Kuwait to "use such measures … as may be necessary" to enforce at sea the embargo imposed against Iraq under resolution 661 (1990). This resolution contains none of the textual elements listed above. However, its preamble recalls previous resolutions unequivocally adopted under Chapter VII, and paragraph 1 states that the grant of authority given to States, which includes the use of force, is for the purpose of ensuring strict implementation of the sanctions contained in resolution 661 (1990). For these reasons, I believe that this exception does not contradict the above considerations, and rather confirms the rule.

21 November 1994

TREATIES

55. Acceptance of depositary functions by the Secretary-General

Facsimile to the Deputy Director and Officer-in-Charge, Environmental Law and Institutions Programme Activity Centre, Nairobi

With reference to your facsimile of 13 May 1994, the position of the United Nations has always been that only the Secretary-General as Chief Administrative Officer is to be entrusted with depositary functions with respect to multilateral treaties. Consequently all such treaties concluded under United Nations auspices should be worded to confer depositary (or possibly administrative) functions on the Secretary-General only, and not on any subordinate official because the Charter of the United Nations centralizes the authority and responsibility for secretariat actions in the Secretary-General. In turn, the Secretary-General has assigned the actual performance of his depositary functions to the Office Of Legal Affairs because of the extreme importance that those functions be performed in a legally correct and absolutely consistent manner, and also that all information on United Nations treaties be available in and published by one office. The above would apply even to limited multilateral agreements, such as agreements open only to members of a United Nations regional commission.

Under established practice, the Secretary-General does not accept depositary functions of very restricted multilateral agreements, as the Agreement on the Preparation of the Tripartite Environmental Management Programme for Lake Victoria appears to be. Thus, unless the Agreement is open to the additional participation of other States of the region, it would appear preferable that the depositary functions be performed by one of the three Governments concerned, as in the case, for example, for a number of treaties concluded by the five countries of the Nordic Council. If such a solution were adopted, the Treaty Section of the Office of Legal Affairs would, of course, if so requested, provide all possible assistance to the depositary thus designated.

27 May 1994

56. Full powers according to the practice of the Secretary-General as depositary of multilateral treaties — Question of full powers and instruments emanating from various authorities of a federal State — Registration of treaties concluded by such authorities

Note verbale to the Permanent Mission of a Member State

The United Nations Secretariat presents its compliments to the Permanent Mission of [name of State] to the United Nations and has the honor to refer to the Permanent Mission's memorandum concerning authorities with capacity to conclude treaties following the recent constitutional amendment. With regard to the questions contained therein, the Secretariat would like to make the following comments:

1. With regard to the signatures of federate authorities, it has already been pointed out that the depositary could accept them provided that the signatories in question were duly authorized by the federal authorities of [name of State] which, in accordance with international practice, were considered as representing the State, namely, the head of State or Government or the Minister for Foreign Affairs.

Full powers must come from one of the three above-mentioned authorities; in fact, the depositary could not accept any other authority as being authorized to grant full powers at the international level. (For this reason the phrase "under the umbrella of [name of State]" does not seem very clear. Full powers must be signed by one of the above-mentioned authorities and not by anyone else.)

2. The heading "[name of State]" on its own would not be enough to prompt the depositary to accept the participation of entities other than States in treaties deposited with him, unless the treaty itself provided for such participation. (Possible participation of Non-Self-Governing Territories or States.) In all other cases, full powers, the names of the signatories and any mention of federate authorities must come from one of the authorities which represent the State in accordance with the international practice which the depositary feels bound to follow, and from them alone.

3. As for the question concerning the instrument of ratification or accession, it should be pointed out that unless the treaty provides otherwise, the depositary would not be in a position to accept any instrument of ratification or accession to a treaty coming from a federate authority. Such "instrument" would not be "valid" in the view of the depositary, for the latter could accept only instruments that were signed

by one of the above-mentioned federal authorities (head of State or Government, Minister for Foreign Affairs) which represented [name of State] at the international level. It might be possible to conceive of a situation where, for internal reasons, the federal authority which signed the instrument in question might mention the various regions which constituted [name of State]. But this reference would have no validity at the international level, since the instrument, even without the specific reference, would be applicable in the entire State (unless the treaty itself provided for "independent" participation of territorial units, as is the case, for example, of the United Nations Convention on Contracts for International Sale of Goods,[104] concluded at Vienna on 11 April 1980).

4. With regard to bilateral treaties submitted for registration in accordance with Article 102 of the Charter of the United Nations, the Secretariat does not, in principle, examine either the full powers or the manner in which the treaties have been signed or ratified. In order to be registered, the only condition would be that the treaties were international treaties, namely, that they had been concluded between [name of State] (the State Member of the United Nations, not one of its federate states) and another entity having capacity to conclude treaties and that they were submitted for registration by [name of State], not by a province or community.

In short, the Secretary-General in his capacity as depositary on international treaties can recognize only [name of State] as having the capacity to conclude treaties. He cannot accept signatures or instruments of any entity other than a State, as defined by the general Assembly[105] unless the treaty itself provides for this specifically, as in the case, for example, of treaties which are open to the European Economic Community. The fact that the [State's] Constitution authorizes at the internal level regions or communities to conclude treaties in areas which are their responsibility (whether exclusive or not) is irrelevant so far as the depositary is concerned. Thus, all full powers and any instrument must be signed by one of the three authorities so empowered in [name of State] and by them alone.

On the other hand, if this is required on the domestic level, there is no reason why it should not be specified in the full powers, if need be, that a given province or community has consented to the issuance of the full powers. However, the full powers must come from and be signed by an authority of [name of State], not by a provincial or other authority. The fact that that authority was granting full powers "under the umbrella" of [name of State] would not be enough. At the very most, powers signed by a regional authority might be accepted but only if they were accompanied by an attestation issued by a "national" authority certifying that the full powers thus signed by the provincial authority were binding upon [name of State] as a whole.

However, such a practice seems extremely complex. The same applies *mutatis mutandis* to instruments. If the "national" authority sees fit to specify in the instrument that a given province or community has approved the instrument, the Secretary-General would have no objection, it being understood that this statement would have no effect at the international level.

29 June 1994

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations.

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

1. Commissary access for staff of the Secretariat of the Conference on Security and Cooperation in Europe

Memorandum to the Director, General Services

1. This is with reference to our conversation of 18 February 1994. In his memorandum of 10 January 1994, Mr. … (IAEA) … has asked for the UNIDO's agreement on access to the Commissary for Staff of the Conference on Security and Cooperation in Europe (CSCE) secretariat.

2. Article II of the Supplemental Agreement on the Commissary of 31 march 1972 between UNIDO and the Government of Austria, as amended on 23 November 1981, provides as follows in its relevant subparagraph:

> "(1) The following categories of persons shall have access to the Commissary:
>
> "…
>
> "…
>
> "(g) With the consent of the United Nations, officials of other international institutions with Headquarters in Vienna to whom the Government has granted the privilege to use Commissary facilities under specified conditions."

3. In its note verbale No. 2005.36/22-I.2/93 of 2 November 1993 to the Director-General of IAEA, the Austrian Government states that the "legal status of institutions of the Conference on Security and Cooperation in Europe, which have their headquarters in Austria, has been regulated by a Federal law promulgated on 30 July 1993 (*Bundesqesetz ueber die Rechtsstellung von Einrichtungen der KSZE in Oesterreich*, BGB1.Nr.511/1993) … Under the terms of the above-mentioned law, the Secretary General of CSCE and the staff of his office as well as the staff of the Secretariat of the CSCE Conflict Prevention Centre and the CSCE Executive Secretariat are granted privileges and immunities to the same extent as established for officials of comparable rank of the United Nations in Vienna. It is the understanding of the Austrian Government that these privileges should include access to the Commissary managed and operated by the International Atomic Energy Agency pursuant to the Memorandum of Understanding of 31 March 1977 between IAEA, the United Nations and the UNIDO concerning the allocation of common services at the Vienna International Centre.

4. It would appear therefore that the government has granted the privilege to use the Commissary to the Staff of CSCE, fulfilling the requirement of article II(1)(g) of the Commissary Agreement of 1972 referred to above. The consent of the United

Nations is also required in that article. In case this consent is forthcoming, access to the Commissary by the CSCE secretariat would be open under article II 1(g) of the 1972 Commissary Agreement between UNIDO and the Austrian Government.

5. Rule 1.04 of the Rules regarding the Commissary at the Vienna International Centre, agreed between the Director-General of IAEA and the Executive Director of UNIDO, effective July 1982, which was referred to in the memorandum of Mr. … of 10 January 1994, provides in part as follows:

> "Organizations other than IAEA, the United Nations (Vienna) and UNIDO may also be given the right of access to the Commissary upon agreement between IAEA, the United Nations (Vienna) and UNIDO on the one hand and the Republic of Austria on the other."

6. It follows from this provision that the agreement is between the three organizations on the one hand and the Republic of Austria on the other. In other words, UNIDO's agreement is necessary as well.

7. As far as the legal side is concerned, in my view, since as set out above, the condition of the 1972 Agreement between UNIDO and the Republic of Austria namely the granting of commissary privileges to the CSCE secretariat by the Government has been fulfilled, UNIDO could give its agreement to the access of CSCE staff to the Commissary, under rule 1.04 of the Commissary rules, if the United Nations agrees. May I suggest that this agreement be communicated by you to IAEA, with the concurrence of the Director-General.

8. For your information I am adding the memoranda date …

9. In accordance with Commissary rule 1.04 there would seem to be the further need for a communication to the Austrian side of the agreement of the United Nations Office at Vienna and UNIDO which could take the form of a letter or a note verbale from IAEA.

22 February 1994

2. Comments on paragraphs 11, 12 and 24 of Industrial Development Board draft document entitled "Administrative matters: International Civil Service Commission," relating to adjustments to the salary and other entitlements of the Director-General.

Memorandum to the Director, Personal Services

I have carefully reviewed paragraphs 11, 12 and 24 of the above-mentioned draft document as well as the contract for the appointment of the Director-General, and would like to make the following comments relating to the need to submit to the International Draft Board for approval adjustments to the net base salary and other entitlements of the Director-General.

1. The contract for the appointment of the Director-General (hereinafter Contract) contains two clauses which refer to adjustments.

The first clause refers only to net base salary and reads as follows:

> "The net base salary shall be adjusted whenever the General Assembly decides to incorporate multiplier points of post adjustment into the base salary of staff in the Professional and higher categories."

The second clause refers to "the above salary, allowances and benefits", i.e., as defined in subparagraphs 6(a) to 6(d) of the Contract and reads as follows: "The above salary, allowances and benefits to which the Director-general is entitled under this agreement shall be subject to adjustment by the Board, after this agreement shall be subject to adjustment by the Board, after consultations with the Director-General, to keep them in line with those of the executive heads of other specialized agencies within the common system of the United Nations or of members of the staff of UNIDO in the Professional category, as the case may be."

2. The adjustment of the "net base salary" as laid down under paragraph 6(a) is to be effected "whenever the General Assembly decides to …"; while the adjustment of "the above salary, allowances and benefits", as laid down in paragraph 6(e), is subject to action by the Board, after consultation with the Director-General.

3. Thus, the first basic difference between the two "adjustments" relates to the nature of the entitlements that are subject to adjustment: (a) "net base salary," as opposed to (b) "salary, allowances and benefits," or what I would call "package of entitlements".

4. The second basic difference between the two "adjustments" lies in the procedure contemplated for their implementation. With regard to the adjustment of the "net base salary," there is an element of automaticity in the contract, the trigger point being "whenever the General Assembly decides to incorporate multiplier points of post adjustment into the base salary of staff in the professional and higher categories".

5. Conversely, the adjustment of the "package of entitlements" is expressly subject to action by the Board "after consultations with the Director-General".

6. Consequently, there is nothing in the Contract which requires that a "net base salary" adjustment should either be reported to the Board or submitted to it for approval. Such a requirement exists only, in the terms of the Contract, with regard to a "package of entitlements" adjustment, in which case a factual report would presumably have to be submitted to the International Draft Board to assist in its consultations with the Director-General.

7. Turning now to the inclusion of the adjustment made to the "DG's emoluments" in the draft International Draft Board document on "Administrative matters: International Civil Service Commission", it is important to note the difference between the amendments made to staff emoluments as prescribed in staff regulation 13.3 and the above-described clauses of the contract for the appointment of the Director-General.

8. Firstly, there is a reporting obligation with respect to the amendments to schedules and annexes relating to staff entitlements (the Director-General shall report annually on such amendments to the International Draft Board); while the Contract contains no such obligation, particularly as regards "net base salary" adjustment.

9. Secondly, the amendments to the staff entitlements under regulation 13.3 are authorized "within the budgetary level approved by the General conference" and subject to the above-mentioned reporting obligation. However, no such limitations are attached to subparagraph 6(a) of the Contract.

10. It might of course be argued that the Director-General is subject to the staff regulations, in accordance with paragraph 5 of the Contract; consequently, regulation 13.3 should also apply to the amendments to his entitlements. Such an argument cannot however stand for the following reasons.

11. First, the Contract itself stipulates that the Director-General "shall be subject to the staff regulations of the organization … *in so far as they are applicable to him*" (emphasis added). Secondly, the reason why the specific benefits of the Director-General have been defined in the Contract is a clear indication of the "special contractual regime" to which they are subject as opposed to the general conditions applicable to all staff members laid down in the staff regulations with respect to emoluments. Thirdly, another reason for the "automaticity" of the adjustment to the "net base salary" of the Director-General stipulated in the Contract might have been that while for the staff it is the Director-General who is empowered to authorize such amendments under regulation 13.3, the General Conference saw it fit to write it directly into the Contract as far as the Director-General himself is concerned.

12. Thus, for the reasons given above, the amendments to staff emoluments should be treated separately from, and should not be lumped together with the adjustments to the "net base salary" of the Director-General.

13. Finally, it might be argued that, for the sake of good administration and transparency towards the policy-making organs of the organization (in this case the International Draft Board), it would be advisable at least to inform them of the adjustment made to the "net base salary" of the Director-General. Such an argument could have appeared plausible if financial implications emanated for the Organization from the implementation of the adjustment. However, this seems not be the case since it is unequivocally stated in paragraph 2 of the Draft Board document mentioned above that the adjustments are based on a no-loss, no-gain formula.

14. In conclusion, it is my view that, for the reasons explained above, there is neither a compelling reason nor a legal requirement which justifies the submission to the International Draft Board for approval, as suggested in the Draft Board document, the net base salary adjustment of the Director-General implemented with effect from 1 March 1994 in accordance with paragraph 6(a) of the contract for the appointment of the Director-General.

15. In the light of the above, I would recommend the deletion of the paragraphs and subparagraphs relating to the adjustment of the net base salary of the Director-General from the International Draft Board draft document entitled "Administrative matters; International Civil Service Commission: Issues related to the United Nations common system and the United Nations pension system."

1 September 1994

3. Cooperation between UNIDO and the Palestinian Liberation Organization

Memorandum to the Chief, External Liaison and Protocol Unit

1. I would like to refer to your routing slip of 19 October 1994 to which the documents that you received from Mr. … were attached, requesting legal advice on the possible conclusion of a memorandum of understanding between UNIDO and the Palestinian Liberation Organization (PLO).

2. As you know, the PLO has observer status both at the General Conference of UNIDO and at the International Draft Board (GC.1/D Sec.21 of 13 December 1985).

3. The General Assembly of the United Nations has also recently, by its resolution 48/213 of 21 December 1993, entitled "Assistance to the Palestinian people", urged "… international intergovernmental … organizations … to extend, as rapidly and as generously as possible, economic and social assistance to the Palestinian people in order to assist in the development of the West Bank and Gaza, and to do so in close cooperation with the Palestinian Liberation Organization and through official Palestinian institutions". In paragraph 7 of the same resolution the Assembly called upon "… relevant organizations and agencies of the system to intensify their assistance in response to the urgent needs of the Palestinian people, and to improve coordination through an appropriate mechanism under the auspices of the Secretary-General".

4. You may also recall General Conference resolution GC.4/Res.7, entitled "Technical assistance to the Palestinian people", whereby the Director-General was requested to "… increase UNIDO assistance to the Palestinian people in close cooperation with the Palestine Liberation Organization" and International Draft Board decision IDB.11/Dec.14, in which the Board requested the Director-General, in paragraph (g), to increase UNIDO assistance to the Palestinian people.

5. The Agreement on the Gaza Strip and the Jericho Area concluded between the Government of Israel and the Palestine Liberation Organization in Cairo on 4 May 1994 states in article VI (Powers and responsibilities of the Palestinian Authority) that the PLO may conduct negotiations and sign agreements with international organizations for the provision of assistance to the Palestinian authority and the implementation of the regional development plans.

6. Consequently, UNIDO may conclude a memorandum of understanding with the PLO for the provision of technical assistance to the Palestinian people. The preparation of the text should be done in collaboration with the substantive services involved since the content of the memorandum should reflect the purposes for which those services have requested the conclusion of such memorandum. The Legal Service is ready to comment on, and review from the legal standpoint, any such text submitted to it on this subject.

17 November 1994

NOTE

[1] See Security Council resolution 751 (1992), para. 2.

[2] See Security Council resolution 794 (1992), para. 13.

[3] "The Government of [host country] shall provide without cost to the United Nations peacekeeping operation and in agreement with the Special Representative/Commander such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of the United Nations peacekeeping operation and for the accommodation of the members of the United Nations peacekeeping operation." (A/45/594, annex: para. 16).

[4] United Kingdom, *Treaty Series*, vol. 9; United Kingdom Cmnd. 5030.

[5] A/3943

[6] Cf. A/47/916/Add.1 of 29 June 1993. It should be noted in this regard that, although the last budgetary presentation for UNOSOM II did not include a specific line item for the payment of third-party claims, such payments are currently charged against the funds allocated for "Supplies and services."

[7] In certain cases in the past, e.g., involving extensions of prior contracts, based on the "old" charter agreement, under which companies had subcontracted with licensed operators, this Office advised that the charter documents based on the new standard United Nations aircraft charter agreement must be signed by both the contractor and its subcontractor. However, we do not agree that the arrangement used in those cases should become standard contracting procedure by the United Nations.

[8] Article 4.3 of the standard United Nations aircraft charter agreement, quoted in the annex to the memorandum.

[9] Ibid.

[10] If it had, it should have been invited to bid in its own right.

[11] United Nations, *Treaty Series*, vol. 15, p. 295.

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

[13] See Secretary-General's bulletin ST/SGB100 of 14 April 1954.

[14] See administrative instruction ST/AI/226 of 18 February 1975.

[15]FAH, pp. D-49 to D-51A. These provisions have been further elaborated in pp. 264 to 267 of the Draft Field Administration Manual, as revised in 1992 (FAM).

[16] FSH, paras. 15, 49 and 54.

[17] FAH, p. D-50, subpara. 2(a) and (c).

[18] Ibid., p. D-51, subpara. 3(a) and (b).

[19] FSH, paras. 49 and 54.

[20] FAH, p. D-50, subpara. 2(d) and (g).

[21] Ibid., p. D-51, subpara. 3(e).

[22] Although the FAH does not provide that travel of non-United Nations personnel on United Nations-chartered aircraft should be on a reimbursable basis, the FSH provides that relocation/evacuation assistance extended to non-United Nations personnel should generally be on a reimbursable basis. We therefore consider that, by analogy to the provisions of the FSH, it would be appropriate that, unless the United Nations has otherwise agreed, all non-United Nations personnel authorized to travel on United Nations-chartered aircraft should reimburse the United Nations for the actual costs incurred in connection with their travel.

[23] FSH, para. 15.

[24] FAH, p. D-51A, para. 7.

[25] We also note that the CAO must ensure that all passengers on board the aircraft possess the appropriate valid customs and immigration documentation (see FAH, p. D-51, para. 4).

[26] Some legal rules imposing liability for death, personal injury or property damage incurred during air travel are mandatory and cannot be waived even by agreement of the passenger.

[27] The standard SSA form used for hiring consultants contains, *inter alia*, a provision that they are entitled to Appendix D coverage.

[28] Those proposals were endorsed by the General Assembly "taking into account" the comments of the report of the ACABQ dated 28 November 1990 (A/45/301). The comments, however, did not concern the specific subject under review and thus the proposals of the Secretary-General on compensation for death, disability and illness were endorsed by the Assembly without any modifications.

[29] We agree with your assessment in paragraph 22 of the draft memorandum that the return of the purchase order by the Company at the request of the United Nations Office at Geneva on the pretence of a need for insertion of a missing signature cannot be viewed as termination or cancellation of the purchase order: the Organization must act fairly, and obtaining the return of the contract on such a basis is acting in bad faith and cannot be relied on by the United Nations.

[30] See article 22 of the General Terms and Conditions.

[31] According to the documentation in our hands, the "destruction" of the premises was caused by at least two rockets that landed in the vicinity of the UNDP office during the recent war.

[32] General Assembly resolution 13 (I) of 13 February 1946, annex I, para. 10.

[33] United Kingdom, *Treaty Series*, vol. 33; United Kingdom Cmnd. 9557.

[34] United Nations, *Treaty Series*, vol. 30, p. 316.

[35] *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).

[36] Paragraph 3.17 of article 1 of the ITU Regulations defines "broadcasting service" as "a radio communication service in which the transmission are intended for direct reception by the general public. This service may include sound transmission, television transmission or other types of transmissions."

[37] General Assembly resolution 13(I), annex I, para. 10.

[38] United Kingdom, *Treaty Series*, vol. 33; United Kingdom Cmnd. 9557.

[39] United Nations, *Treaty Series*, vol. 11, p. 11.

[40] A/45/594.

[41] As indicated in the letter mentioned below, dated 18 February 1994, of the Permanent Representative of the State in question to the United Nations, the Mission of that State in Somalia is a "diplomatic Delegation." We assume, therefore, it has a status similar to that of an embassy.

[42] United Nations, *Treaty Series*, vol. 500, p. 95.

[43] Ibid.

[44] Ibid., article 5, para. 1.

[45] *Juridical Yearbook, 1975*, p. 87.

[46] *Yearbook of the International Law Commission, 1967*, vol. II, document A/CN.4/L.118 and Add. 1 and 2, p. 187, para. 155.

[47] *Yearbook of the International Law Commission, 1974*, vol. II, document A/CN.4/279 and Corr. 1.

[48] United Nations, *Treaty Series*, vol. 943, p. 243.

[49] A/AC. 237/18 (Part II)/Add.1 and Corr.1.

[50] United Nations publication, Sales No. 93.V.11.

[51] S/23877 and A/46/915, respectively.

[52] A/48/847, para. 16.

[53] UNEP was a subsidiary organ of the General Assembly and the Secretary-General was expressly given general administrative powers over the Force, although he had no express power to award a medal. The authority was implied because of the general encompassing nature of powers and the place the award of medals has as a usual adjunct to the functioning of military personnel.

[54] We are not aware of any General Assembly resolutions on the Chernobyl disaster which would, either expressly or impliedly, authorize the establishment of the system of awards. Please note in this regard we have considered General Assembly resolutions 45/190 of 21 December 1990; 46/150 of 17 December 1991; 47/165 of 18 December 1992;

and 48/206 of 21 December 1993.

[55] United Nations, *Treaty Series*, vol. 77, p. 143.

[56] United Nations, *Treaty Series*, vol. 1920, p. 95.

[57] UNEP/Bio.Div./N7-INC./5/4.

[58] A/CONF.129/15

[59] The terms "juridical personality," or "legal personality," are often used interchangeably. The General Convention uses "juridical personality"; Rama-Montaldo refers to "legal personality" (1970 BYBIL 123) and O'Connor uses the term "juristic personality." ICJ in the *Reparations* case talks of "international personality," but "legal personality" is more commonly used by legal writers.

[60] [1949] ICJ 174.

[61] States are the principal subjects of international law, and individual persons are the primary subjects under municipal law. Juridical personality is, however, accorded under municipal law to certain entities such as corporations. Juridical personality accorded under one legal system will be recognized by other municipal legal systems under private international law rules. However, such "reciprocity" does not exist between municipal law and international law.

[62] The Court added that throughout history, "the development of law has been influenced by the requirements of international life and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States".

[63] Examples of these organizations are ILO, FAO, UNESCO, IBRD and the European Community. In certain cases, member States have decided not to accord international personality to certain international organizations and incorporated them under municipal law. An example is the Bank for International Settlements which was established under the law of Switzerland. Most recently the Global Environment Facility (GEF) was established under the umbrella of the IBRD, though in composition and purpose it has the characteristics of a separate body.

[64] The Treaty of Rome states that the European Economic Community "shall enjoy legal personality" and article 211 explains that the community "shall possess the fullest legal capacity accorded to legal persons by the national laws; in particular it may acquire or dispose of movable and immovable property and be a party to legal proceedings. For this purpose, it shall be represented by the Commission."

[65] The Convention on the Privileges and Immunities of the United Nations, to which most States have acceded enumerates the legal capacities of the United Nations; the question whether such enumeration is exhaustive is beyond the scope of this note and is not discussed here.

[66] *United Nations v. Canada Asiatic Lines Ltd*., ILR, vol. 26, p. 622.

[67] Article 22 of the Charter authorizes the General Assembly to "establish such subsidiary organs as it deems necessary for performance of its functions". Article 29 similarly authorizes the Security Council to establish subsidiary organs.

[68] Paragraph 2(a) of General Assembly resolution 57(I) provides that the Fund "shall be authorized to receive funds, contributions or other assistance from any of the foregoing sources; to make expenditures and to finance or arrange for the provision of supplies, material, services and technical assistance for the furtherance of the foregoing purposes; and, generally, to acquire, hold or transfer property, and *to take any other legal action necessary or useful in the performance of its objects and purposes*" (emphasis added).

[69] UNITAR was, for example, established under a statute promulgated by the Secretary-General on the authority of the General Assembly. Its Board is appointed by the Secretary-General and the members of the Board serve in their individual capacity. The statute provides that UNITAR shall have the capacity to contract, etc. However, UNITAR cannot be equated to the major United Nations subsidiary organs such as UNDP. A distinction is thus necessary between these subsidiary bodies for purposes of identifying the

extent to which they can operate under law to engage the responsibility of the United Nations.

[70] "Legal capacity" as used here does not entail possession of an independent personality.

[71] States, in fact, form public corporations for this very purpose and endow them with separate legal personality.

[72] See *Balfour, Guthrie & Co. Ltd. vs. United States*, United States District Court, N.D. California, 1950 [90 F.Supp.831]. This was a case in admiralty and the issue was whether the United Nations Children's Fund could join other libelants in a libel case against the United States as the owner of the *Abraham Rosenberg*, a ship aboard which UNICEF had shipped goods (large quantities of milk) that were either lost or damaged on arrival to Italy and Greece. In that case, it was held that "the wide variety of activities in which they engage is likely to give rise to claims against [defendants] that can most readily be disposed of in national courts."

[73] See 1985 ILC study on, *inter alia*, the juridical personality of the Organization (A/CN.4/L.383/Add.1). ILC distinguished between the concept of "juridical personality" and that of "legal capacity" and indicated that, while a body endowed with independent juridical personality necessarily possessed legal capacity, the question whether a body possessing legal capacity "may also be deemed to enjoy an independent juridical personality depends in each case upon the relevant terms of its constituent instrument.." The study cites a 1969 opinion of the Office of Legal Affairs, which stated that WFP, a joint United Nations and FAO subsidiary body, "possesses the legal capacity to acquire and dispose of movable property entered into contracts, and be sued", but that the possession of legal capacity did not necessarily mean that the entity "enjoys an independent juridical personality."

[74] In this respect, these bodies may only enter into international agreements on the basis of full powers from the parent body for each agreement, and on terms approved by their governing bodies.

[75] In many cases, whether the subsidiary body contracts or institutes an action in its own name, the courts have regarded such action as that of the United Nations unless, under the municipal law of the country concerned, the particular subsidiary body has been recognized as having the capacity to contract and to sue. There have been inquiries as to whether such a body has capacity to sue, as in a recent case in Germany brought by the Inter-Agency Procurement Services Office, but rarely would such a body be denied the right to recover for lack of capacity once it is explained that it is part of the United Nations.

[76] For example, in Uganda by statute, UNDP and UNICEF, in addition to the United Nations, are listed among organizations accorded legal capacities.

[77] Report of the 69th session of ACC, New York, September 1988 (ACC/1988/13).

[78] A specialized agency is an agency established by intergovernmental agreement having wide international responsibilities, as defined in its basic instrument, in economic, social, cultural, educational, health, and related fields, and brought into relationship with the United Nations in accordance with Article 57 and 63 of the Charter by means of an agreement negotiated with the United Nations ("Summary of internal Secretariat studies of constitutional questions relating to agencies within the framework of the United Nations adopted by the General Assembly at its ninth session (A/C.1/785)). Therefore, a specialized agency is created by the States themselves and is not an integral part of the Organization.

[79] The fact that the Institute is self-financed does not change its legal nature and cannot equate UNITAR to specialized agencies or other outside bodies.

[80] A/47/458.

[81] General Assembly resolution 47/227.

[82] United Nations, *Treaty Series*, vol. 999, p. 171.

[83] See E/AC.7/L.572 and E/AC.7/SR.642. The Italian proposal was adopted with-

out a change at the 643rd meeting of the Social Committee, on 21 May 1970 by 17 votes to none, with 8 abstentions (E/AC.7/SR.643). The draft resolution as a whole was adopted by the Economic and Social Council as resolution 1503 (XLVIII) by 14 votes to 7, with 8 abstentions.

[84] E/AC.7/SR.642, p. 188.

[85] The role of each organ is summarized in document E/CN.4/1994/42, paras. 53 – 58 and 68 – 76.

[86] The Secretary-General's report (E/CN.4/1994/42) deals in some detail with the 1503 procedure and a range of other procedures, treaty-based and non-treaty based. See, for example paragraphs 50 to 58, 66 to 76 and 82 to 84, which deal respectively with the main features, the method of work and the criteria used for determining whether communications are channeled into a public machinery or into the 1503 procedure.

[87] The report of the Secretary-General was contained in E/CN.4/1317. Apparently, the report was not discussed by the Commission.

[88] United Nations, *Treaty Series*, vol. 1465, p. 85.

[89] Ibid.

[90] General Assembly resolution 45/158.

[91] See discussion on paragraph 10 at the Social Committee at its 642nd meeting, held on 21 May 1970 (E/AC.7/SR.642).

[92] Paragraph 8 states: "… all actions envisaged in the implementation of the present resolution by the Subcommission on Prevention of Discrimination and Protection of Minorities or the Commission on Human Rights shall remain confidential until such time as the Commission may decide to make recommendations to the Economic and Social Council."

[93] For background of this practice, see E/CN.4/1994/42, paras. 48 and 82.

[94] Resolution 1240, para. 8.

[95] Resolution 2029 (XX), para. 4.

[96] Resolution 48/162, para. 15.

[97] A/CONF.117/14.

[98] United Nations Publication, Sales No.F.79.V.10.

[99] *Inter alia*, those relating to fitness of the aircraft and the right of the United Nations to inspect it (Agreement, art. 13), the remedies of the United Nations in case of delay, cancellation of flight by the carrier or unavailability of the aircraft (Agreement, art. 13, and General Conditions, art. 6), the right of the United Nations to request withdrawal of the carrier's personnel attending the aircraft (Agreement, art. 13), the responsibility of the carrier for claims against the United Nations (Agreement, art. 15), the United Nations tax exemption (General Conditions, art. 3), the right of the United Nations to cancel flights (General Conditions, art. 7), the conditions for termination and modification of the charter agreement (General Conditions, arts. 8 and 12) and for arbitration of disputes (General Condition, art. 15), the United Nations privileges and immunities (General Conditions, art. 16), and the conditions applicable to insurance (the limits of liability insurance under the Warsaw Convention have been increased to $75,000 per passenger) (art. 9 of the Agreement and art. 4 of General Conditions), etc.

[100] The United Nations has concluded a contract with American Express for issuance of passenger tickets. This firm may be in a position to handle volume air travel on scheduled flights as well, where charter of the entire aircraft is uneconomical.

[101] *Official Records of the General Assembly, Forty-eighth session*, Supplement No. 17 (A/48/17), annex I.

[102] *International Legal Materials*, vol. XXVI, No. 6, p. 1541.

[103] Ibid., p. 1529

[104] A/CONF.97/18.

[105] See 2202nd plenary meeting of 14 December 1973 (A/Pr.2202) and *Yearbook of the International Law Commission, 1973*, vol. II, document A/CN.4/271, para. 38, p. 81.

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 1994.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Argentina

Judgements of the Supreme Court

January

PEDRO DANIEL WEINBERG

Jurisdiction and competence: National competence. Original jurisdiction of the Supreme Court. General remarks.

The original jurisdiction of the Supreme Court arises from the Argentine Constitution and may not be broadened, restricted or modified by legal norms.

Jurisdiction and competence: National competence. Original jurisdiction of the Supreme Court. General remarks.

> The Supreme Court has no original jurisdiction in the criminal proceedings instituted against an Argentine citizen who performs technical duties in an international organization — the Inter-American Center for Research and Documentation on Vocational Training, a subsidiary organ of the International Labour Organization — on the basis of an accusation unrelated to his specific duties, since he is not a diplomatic agent in the strict sense, does not represent the Organization and does enjoy full immunity. The existence and scope, where applicable, of the immunities from which the accused might benefit, in accordance with his status and the relevant legal norms, will have to be determined by the competent judge.

Opinion of the Public Prosecutor of the Supreme Court

Supreme Court:

The alternate federal judge for the federal court of Río cuarto declared that that tribunal was not competent to hear the case brought against Pedro Daniel Weinberg for a violation of article 213 *bis* of the Penal Code and Act 20.840 owing to the fact

that the accused is an "expert" in the Inter-American Center for Research and Documentation on Vocational Training, a subsidiary organ of the International Labour Organization, which status, in the opinion of the aforesaid magistrate, is subject to the provision of articles 100 and 101 of the Argentine Constitution, which establish the original jurisdiction of the Supreme Court. For this reason, he referred the case to the Supreme Court.

You have consistently upheld the principle according to which such competence must be construed strictly, and may not be broadened, restricted or modified by legal norms (cf., *inter alia*, Judgements 270:78, 271:145, 280:176 and 203, and 284:20).

On the basis of this premise, it should be pointed out that the aforesaid main provisions apply only to ambassadors, public ministers and foreign consuls and that, consequently, officials of international organizations cannot be included in these expressly stated categories, as has been done in the case under consideration, without running the risk of contradicting the aforementioned principle of jurisprudence.

With regard to this matter, the Supreme Court stated in Judgement 250:775 that the granting of diplomatic privileges by legislative means does not give rise to its original jurisdiction.

In the case under consideration, the function of the accused is not of a recognized diplomatic nature in the strict sense, as is made clear by the report of the Ministry of Foreign Affairs, which is contained in the file; in accordance with the consistent practice of the Court, the Ministry is the appropriate authority for establishing diplomatic status for purposes of the Court's jurisdiction (Judgements 238:313, 250:775, etc.).

The difference between the two statuses becomes clear if one bears in mind that officials of international organizations, such as the International Labour Organization, are governed by a convention of their own (Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the United Nations General Assembly in its resolution 179 (II) of 21 November 1947). In this connection, one should, owing to its importance, draw attention to the regime governing immunities which appears to be more limited in scope than the regime established for diplomats in the strict sense, since it is stressed that such immunities are accorded "so far as is necessary for the effective exercise of their functions", as long as they exercise such functions not for their personal benefit but in the interests of the Organization, which, in addition shall have "the right and the duty to waive the immunity of any expert in any case where in its opinion and the immunity would impede the course of justice" (convention on the Privileges and Immunities of the Specialized Agencies; annex I, approved on 1 April 1974).

Moreover, in my opinion, the fact that the accused is an Argentine citizen is of paramount importance in the case under consideration. This is, in fact, a long-standing principle, formulated by Carlos Calvo (see his *Treatise on International Law*, Paris, 1868, pp. 236-237), which states that, when a national of a country represents a foreign country in his own country, he shall be subject to the local laws in connection with acts that are unrelated to his position. It therefore seems to me that it follows logically from this principle that the tribunal for trying Pedro Daniel Weinberg for alleged crimes committed prior to his appointment to the position he holds in an international organization, insofar as it is not clear that he had been accredited by Argentina to carry out duties relating to his position, cannot be the special court established by the aforementioned constitutional provisions.

In the light of the foregoing, it is my opinion that the present case does not fall within your original jurisdiction.

15 January 1980

HÉCTOR J. BAUSSET

MARCELO EDUARDO BOMBAU

Jurisdiction and competence: Federal competence. Original jurisdiction of the Supreme Court. Diplomatic and consular agents.

The original jurisdiction of the Court includes ambassadors, public ministers and foreign consuls (art. 101 of the Argentine Constitution). Since this limitation may not be extended by legislation, the diplomatic privileges that might be enjoyed by officials of an international body (cf. Art. V, sect. 18, subpara. (a), of the Convention on the Privileges and Immunities of the United Nations), cannot alter such jurisdiction.

Jurisdiction and competence: Federal competence. Original jurisdiction of the Supreme Court. General remarks.

The privilege that article II, section 2, of the Convention on the Privileges and Immunities of the United Nations accords to United Nations property does not give rise to the original jurisdiction of the Supreme Court. This is the case because, if foreign states are not exempt from the provisions of article 101 of the Argentine Constitution, an international organization established by those States cannot be in a better position or enjoy greater privileges.

Jurisdiction and competence: Federal competence. Original jurisdiction of the Supreme Court. General remarks.

Whether the vehicle that was allegedly involved in the municipal infraction belonged to an individual, the United Nations High Commissioner for Refugees or an official of his Office, or to the United Nations, the Court is not authorized to hear the case, which will have to be referred to the competent body in order to determine whether and, if so, to what extent that international body or its officials enjoy immunities and privileges.

2. Germany

Press release issued by the Federal Constitutional Court No. 29/94

In the proceedings on the dispute over the deployment of German forces, the Federal Constitutional Court (Second Panel) has ruled that the Federal Republic of Germany is at liberty to assign German armed forces in operations mounted by the North Atlantic treaty Organization (NATO) and Western European Union (WEU) to

implement resolutions of the Security Council of the United Nations. The same applies to the assignment of German contingents to peacekeeping forces of the United Nations. However, the Basic Law requires the Federal Government to obtain — in principle the prior — explicit approval of the German Bundestag. The ruling was sought by the Social Democratic Party (SDP) and the Free Democratic Party (FDP) groups in the Bundestag.

According to article 24(2) of the Basic Law, the Federation may become a party to a system of collective security and in so doing consent to limitations upon its sovereign powers. The Federal Constitutional Court also sees in this power conferred by the Basic Law the constitutional foundation for an assumption of responsibilities that are typically associated with membership of such a system of collective security. Hence German servicemen may be deployed within the scope of United Nations peacekeeping missions even if the latter are authorized to use force. The objections submitted by the applicants on constitutional grounds to the participation of German forces in the UNOSOM II mission in Somalia, in the NATO/WEU naval operation in the Adriatic to monitor a United Nations embargo on the Federative Republic of Yugoslavia and in the AWACS monitoring of the ban on flights in the airspace over Bosnia and Herzegovina, likewise imposed by the United Nations, are therefore rejected. German servicemen may also be integrated into NATO formations which are deployed within the framework of United Nations operations. This, according to the Court, is covered by parliament's approval of Germany's accession to NATO and the Charter of the United Nations.

The Court also finds, however, after thoroughly analyzing the provisions of the Basic Law relating to the status of the armed forces in the constitutional system, that the Federal Government is required to obtain the Bundestag's explicit approval for each deployment of German armed forces. Such approval must in principle be obtained prior to their deployment. The Bundestag must decide on the deployment of armed forces with a simple majority. Once parliament has given its approval, the decision on the modalities of deployment and on necessary coordination within and with the governing bodies of international organizations, falls within the government's sphere of competence. The nature and extent of Parliament's involvement is for Parliament itself to decide within the scope of these constitutional constraints.

A violation of article 59(2) of the Basic Law could not be found because the Panel's votes were equally divided. The applicants had argued that the deployment of NATO forces under the auspices of the United Nations constituted a substantive change in the NATO Treaty and that any such change required the approval of Parliament under article 59(2) of the Basic Law. Four members of the Panel, whose opinion carries the decision, take the view that the members of NATO, by taking the contentious measures, had clearly not done so with the intention of already extending the NATO Treaty to include further tasks. In the opinion of the other four members of the Panel, the Federal Government was involved in a progressive extension of the NATO Treaty in a manner which threatened to undermine the participatory rights of the Bundestag. They held that this constituted a direct threat to those rights.

With this decision the Federal Constitutional Court has recognized the long-disputed admissibility of the deployment of German forces under a United Nations mandate but at the same time made their deployment in each individual case subject to the approval of the German Bundestag.

Justices Böckenförde and Kruis explained in a dissenting opinion that the application of the FDP parliamentary group ought to have been declared inadmissible and rejected.

(Decision of the Second Panel, 12 July 1994 -2 BvE 3/92, 2 BvE 5/93, 2 be 7/93 and 2 be 8/93 -) Karlsruhe, 12 July 1994.

3. United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Memorandum and order

92 Civ. 2021 (wk)

MAURIZIO DE LUCA (PLAINTIFF) AGAINST THE UNITED NATIONS ORGANIZATION, JAVIER PEREZ DE CUELLAR, LUIS MARIA GOMEZ, ARMANDO DUQUE, KOFI ANNAN, ABDOU CISS, OLEG BUGAEV, SUSAN R. MILLS, FREDERICK GAZZOLI (DEFENDANTS)

WHITMAN KNAPP, SENIOR DISTRICT JUDGE

Plaintiff moves for default judgment against the United Nations and eight United Nations officials and employees under federal rule of civil procedure 55(b)(2). On 30 March 1993, plaintiff filed a complaint *pro se* alleging breach of contract, forgery, negligence and the violation of federal civil rights and employee medical benefits law. When plaintiff served process upon defendants during April, May and June 1993, the United Nations Legal Counsel wrote the court explaining that the organization and the individual defendants, with respect to acts performed by them in their official capacity, are immune from all legal process under international and United States law. None of the defendants have answered the complaint. Presently, the United Nations, on behalf of itself and the eight individual defendants, moves to dismiss the complaint for lack of subject-matter jurisdiction, lack of personal jurisdiction, insufficiency of service of process and on the basis of immunity. The United States appeared at oral argument on the motions on 10 September 1993 and has submitted a statement of interest in support of defendants' motion to dismiss.

For reasons that follow, we deny plaintiff's motion for default and, on the basis of immunity, grant defendants' motion to dismiss the complaint.

BACKGROUND

Plaintiff, a United States citizen, was employed by the United Nations as a security officer from June 1977 until 31 December 1988, the effective date of his resignation. Pursuant to regulations set forth by its General Assembly, the United

Nations withholds the estimated federal and local taxes of staff members whose national Governments require them to pay such taxes based on their United Nations salaries. It then reimburses the employees, enabling them to pay their taxes directly to their national Governments. Between 1977 and 1987, the United Nations withheld plaintiff's estimated federal, state and local income taxes and then reimbursed him in the form of cheques made payable to himself and the Internal Revenue Service (IRS). However, for the tax year 1988, the United Nations withheld plaintiff's estimated taxes but never reimbursed him. The United Nations claims that it did so because plaintiff failed to provide it with certified copies of his 1988 tax return. Plaintiff alleges that the United Nations reported to IRS that it had reimbursed his withheld taxes for 1988. This information, plaintiff contends, led IRS to audit him for those tax years between 1990 and 1992. Moreover, because the United Nations had never reimbursed him in 1988, plaintiff was personally required to pay $6,801.36 in federal, state and local tax for that year.

Plaintiff contends that the actions of the United Nations constituted breach of his employment contract, prima facie tort, injurious falsehood and employment discrimination prohibited by Title VII, 42 U.S.C.A. 2000e et seq. (1981 & Suppl. 1991). He alleges that in 1987, in retaliation for pressure exerted by the United States on the United Nations to reduce its personnel during the mid-1980s, United Nations Secretary-General Javier Perez de Cuellar initiated an unprecedented tax audit of United States nationals employed by the Organization, including himself. Plaintiff claims that United States nationals were singled out in the audit, as the United Nations never audited the nationals of four other countries which, like the United States, require that United Nations employees pay national taxes.

After plaintiff left the United Nations on 20 April 1989, its Finance Division issued a "final pay statement" which indicated that plaintiff had received $850.72 in retroactive pay and compensatory time which he alleges he never received. Plaintiff further alleges that this final pay statement contained his forged signature and was issued with the intent of defrauding him of his remaining salary and compensatory time.

Finally, plaintiff claims that the United Nations denied him continuation of his medical benefits after his resignation in violation of 29 U.S.C.A. 1161 (Supp. 1993), which requires certain employers to allow former employees to elect continued coverage under the employer's group health insurance plan.

Discussion

Plaintiff contends that he is entitled to default judgment against defendants because they failed to answer his complaint, which alleges damages in the amount of $1,408,504.76. The United Nations argues that plaintiff's complaint must be dismissed under Fed.R.Civ.Pro.12(b) because both itself and the individual defendants, who are alleged to have been acting in the course of their employment, are cloaked with immunity under international and federal law. On a motion to dismiss, a district court must construe the complaint in favor of the pleader (see *Scheuer v. Rhodes* (1974) 416 U.S. 232, 236) and must accept as true its factual allegations (see *LaBounty v. Adler* (2d Cir. 1991) 933 F.2d 121, 123). We separately discuss plaintiff's claims against the United Nations and those against the individual defendants.

(A) THE UNITED NATIONS

Under the Convention on the Privileges and Immunities of the United Nations ("United Nations Convention"), 13 February 1946, 21 U.S.T. 1418, 1422, T.I.A.S. 6900, acceded to by the United States in 1970, the United Nations and "its property and assets" enjoy immunity from "every form of legal process except insofar as in any particular case it has expressly waived its immunity". United Nations Convention, art. II, sec. 2; see also *Boimah v. United Nations General Assembly* (E.D.N.Y. 1987) 664 F.Suppl. 69, 71.[1] A district court may dismiss a complaint based on a defendant's established immunity. Properly invoked immunity shields a defendant "not only from the consequences of litigation's results, but also from the burden of defending themselves". *Davis B. Passman* (1979) 442 U.S. 228, 235 n.11, quoting *Dombrowski v. Eastland* (1967) 387 U.S. 82, 85. Plaintiff has not alleged that the United Nations has expressly waived its immunity in this instance and no evidence presented in this case so suggests. Finding the United Nations to be immune from plaintiff's claims, we dismiss them.

(B) INDIVIDUAL DEFENDANTS

Of the eight current or former United Nations officials and employees named as individual defendants, two currently serve as Assistant Secretaries-General: Luis Maria Gomez and Kofi Annan. The United Nations Convention confers upon such officers "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law". United Nations Convention art. V, sec. 19. In the United States, article 31 of the Vienna Convention on Diplomatic Relations (Vienna Convention), 18 April 1961, 22 U.S.T. 3227, T.I.A.S. 7502 (entered into force for the United States 1 December 1972), governs the privileges and immunities of diplomatic envoys and provides, in pertinent part:

> "1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
>
> "(a) A real action relating to private immovable property…
>
> "(b) An action relating to succession in which the diplomatic agent is involved …
>
> "(c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions."

Assistant Secretaries-General Annan and Gomez are immune from plaintiff's claims under the United Nations and Vienna Conventions as none of the exceptions listed in article 31 of the Vienna Convention apply here. The instant case is neither a real action relating to private immovable property nor a succession action. Moreover, it involves neither a commercial nor a professional activity exercised by either of these defendants outside their official functions. Rather, plaintiff has alleged that Gomez failed to reimburse him for taxes the United Nations withheld and that Annan denied him the right to elect continued coverage under the Organization's group health plan.

One of the remaining six defendants is a former United Nations Secretary-General — Javier Perez de Cuellar — and another is a former Assistant Secretary-General — Abdou Ciss. Persons formerly serving the United Nations in such capacity are protected by the same immunity afforded former diplomatic agents under the Vienna Convention," immunity "with respect to acts performed by such persons in the exercise of [their]functions as member[s] of the mission …" Vienna Convention Art. 39(2). Because plaintiff's claims against Perez de Cuellar and Ciss are based solely on their official activities at the United Nations, these defendants are immune from the current action. Plaintiff's claims against the former Secretary-General are based on the following: (a) his alleged supervision of the United Nations Finance Division, which failed to reimburse plaintiff for his 1988 taxes and which plaintiff claims, issued a forged and fraudulent pay statement; (b) his alleged supervision of the United Nations Office of Human Resources Management, which plaintiff claims denied his extended medical coverage; (c) his alleged supervision of the United Nations Office of Human Resources Management, which plaintiff asserts failed to respond to complaints he filed about the taxes, the pay statement and his medical coverage, and (d) his creation of the 1987 tax audit that plaintiff claims was intended to retaliate against the United States. Similarly, plaintiff's complaint alleges that Ciss, who ran the United Nations Office of Human Resources Management, failed to investigate plaintiff's complaints regarding the aforementioned misconduct.

The remaining four defendants are current or former United Nations officers: Armando Duque, former Director of Personnel of the United Nations Office of Human Resources Management; Susan R. Mills, Deputy Controller; Frederick Gazzoli, Acting Chief of the Internal Audit Section of the United Nations Development Programme; and Oleg Bugaev, Director of the Internal Audit. Under § 1(b) of the International Organization Immunities Act (IOIA), 22 U.S.C.A. §§ 288 et seq. (1990 & Suppl. 1993), United Nations officers and employees are immune from suit and legal process "relating to acts performed by them in their official capacity and falling within their functions as officers or employees, except insofar as such immunity may be waived by the [United Nations]". IOIA, 22 U.S.C.A. § 228d(b).[2] Here, plaintiff has not alleged that the United Nations has waived the immunity of these four defendants.

We find these four defendants immune from plaintiff's claims under IOIA because those claims relate only to acts performed by them "in their official capacity". The complaint alleges that Duque failed to investigate plaintiff's complaints; that Mills never reimbursed plaintiff for his 1988 taxes and produced a false and forged pay statement; and that Gazzoli and Bugaev, for auditing purposes, obtained documents regarding plaintiff's taxes from New York State officials. Notwithstanding how improper any of these actions may have been, they represent precisely the type of official activity which 7(b) of IOIA was intended to immunize. See e.g., *Tuck v. Pan Am, Health Org. et al.* (D.C. Cir. 1981) 668 F.2d 547, 550, fn. 7 (Director of Pan American Health Organization (PAHO) immune under IOIA § 7(b) from plaintiff's breach of contract and race discrimination claims to the extent that "the acts alleged in the complaint relate to [his] functions as PAHO Director"); *Boimah v. United Nations General Assembly* (E.D.N.Y. 1987) 664 F.Suppl. 69, 71 (individual officers of the United Nations General Assembly would have been immune from plaintiff's employment discrimination action under § 7(b) had plaintiff chosen to sue them individually.

Plaintiff contends that none of the individual defendants are immune because in participating in the alleged misconduct each violated either federal and state law or the Organization's own internal regulations. However, the case law applying § 7(b) rejects the notion that a defendant's immunity under IOIA can be defeated by allegations of illegal conduct. See, e.g., *Tuck*; *Boimah*. Plaintiff would have us rely on *People v. Coumatos*, (Gen. Sess. N.Y. Co. 1961) 224 N.Y.S.2d 504, *later opinion*, (Gen. Sess. N.Y. Co. 1962) 224 N.Y. S. 2d 504, later opinion (Gen. Sess. N.Y. Co. 1962) 224 N.Y.S.2d 507, *aff'd mem.* (1st Dep't 1964) 247 N.Y.S.2d 1000, in which the trial court held that defendant, a United Nations inventory clerk indicted on 44 counts of grand larceny, had no diplomatic immunity preventing it from exercising its jurisdiction over the case. The trial court noted that the defendant failed to claim that his alleged crimes, which involved thefts against his co-workers, were either "directly or remotely related to the functions of his United Nations employment". 224 N.Y.S.2d at 510. *Coumatos* is clearly inapposite as plaintiff's claims challenge actions which defendants have taken in implementing United Nations employment and financial policy.

Similarly unavailing is plaintiff's assertion that defendants acted in bad faith or with improper motive. That assertion has no bearing on our determination a to whether or not they are immune from the present action under IOIA. See, e.g., *Donald v. Orfila* (D.C. Cir. 1986) 788F.2d 36. In *Orfila*, the District of Columbia Circuit found defendant, Secretary-General of the Organization of American States (OAS), immune under IOIA § 7(b) from plaintiff's action for breach of contract and intentional infliction of emotional distress, notwithstanding plaintiff's claim that the Secretary had acted in bad faith. The court refused to characterize plaintiff's termination from employment at OAS as an "individual" rather than "official" act of the defendant based on the asserted impropriety of defendant's motive, reasoning that if it were to determine defendant's immunity in such a manner, "the 22U.S.C. § 228d(b) immunity shield, which Congress intended to afford solid protection, would indeed be evanescent." Idem, at p. 37.

Although plaintiff has leveled some rather serious charges against both the United Nations and the individual defendants, we must bear in mind the policy underlying the immunity from employee actions which international and federal law provides international organizations and their officers, as stated by the District of Columbia Circuit:

> "[T]he purpose of immunity from employee actions is rooted in the need to protect international organizations from unilateral control by a member nation over the activities of the international organization within its territory. The sheer difficulty of administering multiple employment practices in each area in which an organization operates suggests that the purposes of an organization could be greatly hampered if it could be subjected to suit by its employees worldwide." *Mendaro v. World Bank* (D.C. Cir. 1983) 717 F.2d 610, 615-16.

Conclusion

Find that the United Nations and the eight individual defendants are immune from this action under international and federal law, we deny plaintiff's motion for default judgement and grant defendants' motion to dismiss the complaint in its entirety with prejudice.

SO ORDERED.

New York, New York

10 January 1994

Whitman Knapp, Senior United States District Judge

Notes

[1] The International Organizations Immunities Act (IOIA), 22 U.S.C.A. §§ 288 et seq. (1990 & Suppl. 1993), enacted in 1945, cloaks the United Nations with similar immunity. Under IOIA, designated international organizations receive the same immunity as that "enjoyed by foreign Governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract". 22 U.S.C.A. §§ 288a(b). The United Nations was so designated by executive order in 1946. See Ex. Ord. No. 9698, 11 F.R. 1809 (19 February 1946). The immunity of foreign Governments is now governed by the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C.A. 1602 et seq. (Supp. 1993). FSIA confers on foreign Governments general jurisdictional immunity subject to several exceptions. 28 U.S.C.A. § 1604. We need not consider the application of these exceptions to the instant case, for the United Nations Convention, which contains no such exceptions, provides sufficient ground for finding the United Nations immune from plaintiff's claims.

[2] The United Nations Convention similarly confers upon certain categories of United Nations officials — those designated by the Secretary General — "immun[ity] from legal process in respect of words spoken or written and all acts performed by them in their official capacity." United Nations Convention, art. V., sec. 18(a). We need not determine which individual defendants fall within such designated categories as the officer immunity provision of IOIA, § 7(b), applies to all of them.Part Four

Part Four

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