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UNITED NATIONS JURIDICAL YEARBOOK 1996

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FOREWORD

By its resolution 1814 (XVII) of 18 December 1962, the General Assembly requested the Secretary-General to publish *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-forth 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 1996. Decisions given in 1996 by the international and national tribunals relating to the legal status of the various organizations are found in chapters VII and VIII.

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

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

Finally, the bibliography, which is prepared under the responsibility of the Office of Legal Affairs by the Dag Hammarskjold Library, lists works and articles of a legal charger published in 1996.

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

ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLAC	Economic Commission for Latin America and theCaribbean
ESCAP	Economic and Social Commission for Asia and the Pacific
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Cooperation
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
ITU	International Telecommunication Union
MIGA	Multilateral Investment Guarantee Agency
UNCHS	United Nations Centre for Human Settlements (Habitat)
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

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

1. United Kingdom of Great Britain and Northern Ireland

(*a*) THE INTERNATIONAL SEA-BED AUTHORITY (IMMUNITIES AND PRIVILEGES) ORDER 1996[1]

Made *14 February 1996*

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 14th day of February 1996

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament in accordance with section 10 of the International Organisations Act 1968[2] ("the Act") and has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by section 1 of the Act[3] or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

PART I

General

Citation and entry into force

1. (1) This Order may be cited as the International Sea-Bed Authority (Immunities and Privileges) Order 1996.

(2) It shall, with the exception of article 13, come into force on the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the United Nations Convention on the Law of the Sea of 10 December 1982[4] ("the Convention") enters into force in respect of the United Kingdom.

(3) Article 13 shall come into force on the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the Enterprise operates independently of the Secretariat of the Authority.

Interpretation

2. In this Order:

(*a*) "the 1961 Convention Articles" means the articles (being certain articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in schedule 1 to the Diplomatic Privileges Act 1964;[5]

(*b*) "Authority" means the International Sea-Bed Authority established by the Convention;

(*c*) "Enterprise" means the organ of the Authority referred to in article 158 [2], and article 170 of the Convention;

(*d*) "representative" means a representative of a member of the Authority attending meetings of the Assembly, the Council or organs of the Assembly or Council.

PART II

The Authority

3. The Authority is an organization of which the United Kingdom and other sovereign Powers are members.

4. The Authority (including the Enterprise) shall have the legal capacities of a body corporate.

5. The Authority, its property and assets shall enjoy immunity from suit and legal process, except to the extent that the Authority expressly waives this immunity in a particular case.

6. The Authority shall have the like inviolability in respect of its premises and archives as, in accordance with the 1961 Convention Articles, is accorded in respect of the official premises and archives of a diplomatic mission.

7. Within the scope of its official activities, the Authority, its assets and property, its income, and its operations and transactions, authorized by the Convention, shall have the exemption from income tax, capital gains tax and corporation tax.

8. The Authority shall have the like relief from rates as in accordance with article 23 of the 1961 Convention Articles is accorded in respect of the premises of a diplomatic mission.

9. The Authority shall have exemption from customs duties and taxes on the importation of goods for its official use in the United Kingdom.

10. The Authority shall have relief, under arrangements made by the Commissioners of Customs and Excise, by way of refund of customs duty paid on imported hydrocarbon oil (within the meaning of the Hydrocarbon Oil Duties Act 1979[6] or value added tax paid on the importation of such oil which is bought in the United Kingdom and used for the official purposes of the Authority, such relief to be subject to the compliance with the conditions as may be imposed in accordance with the arrangements.

11. The Authority shall have relief, under arrangements made by the Secretary of State, by way of refund of value, added tax paid on the purchase of new motor vehicles of United Kingdom manufacture and of value added tax on the supply of any goods or services which are used for the official purposes of the Authority, such relief to be subject to compliance with the conditions as may be imposed in accordance with the arrangements.

PART III

The Enterprise

12. Articles 5 to 11 of this Order shall not apply to the Enterprise.

13. Except to the extent that the Enterprise shall have waived such immunity, the Enterprise shall have immunity from suit and legal process:

(*a*) Where the Enterprise has no office in the United Kingdom, has not appointed any agent in the United Kingdom for the purpose of accepting service or notice of process, has not entered into a contract for goods or services in the United Kingdom, has not issued securities in the United Kingdom and has not otherwise engaged in commercial activity in the United Kingdom;

(*b*) In respect of all forms of seizure, attachment or execution before the delivery of final judgement against the Enterprise; and

(*c*) In respect of the requisition, confiscation, expropriation or any other form of seizure of property or assets of the Enterprise wherever located and by whomsoever held.

PART IV

Representatives

14. (1) Representatives shall enjoy immunity from suit and legal process with respect to acts performed by them in the exercise of their functions, except to the extent that the State which they represent expressly waives this immunity in a particular case.

(2) Part IV of schedule 1 to the Act shall not operate than so as to confer any privilege or immunity or:

(*a*) The official staff of a representative other than alternate representatives and advisers, or

(*b*) The family of a representative.

(3) Neither the preceding paragraphs of the article nor part IV of schedule 1 to the Act shall operate so as to confer any privilege or immunity on any person as the representative of the United Kingdom or as a member of the official staff of such a representative or on any person who is a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a British National (Overseas).

PART IV

Officials

15. (1) The Secretary-General and staff of the Authority shall enjoy immunity from suit and legal process with respect to acts performed by them in the exercise of their functions, except to the extent that the Authority expressly waives this immunity in a particular case.

(2) The Secretary-General and staff of the Authority, who are not British citizens, British Dependent Territories citizens, British Overseas citizens or British Nationals (Overseas) shall enjoy exemption from income tax in respect of emoluments received by them from the Authority.

(3) Part IV of schedule 1 to the Act shall not operate so as to confer any privilege or immunity on any member of the family of an official to whom this article applies.

(4) Paragraph 2 of this article shall not apply to pensions and annuities paid by the Authority.

PART V

Experts Performing Missions

16. Experts performing missions for the Authority who are not British citizens, British Dependent Territories citizens, British Overseas citizens or British Nationals (Overseas) shall enjoy exemption from income tax in respect of emoluments received by them from the Authority.

N. H. NICHOLLS
Clerk of the Privy Council

Explanatory note

(*This note is not part of the Order*)

This Order confers privileges and immunities on the International Sea Bed Authority, its officials, representatives of its members and experts performing missions for it, and on the Enterprise, an organ of the Authority. These privileges and immunities are conferred in accordance with the United Nations Convention on the Law of the Sea (Cmnd. 8941). The Order will enable Her Majesty's Government to give effect to that Convention, and will come into force, with the exception of article 13, on the date on which the Convention enters into force in respect of the United Kingdom. Article 13 will come into force when the Enterprise operates independently of the Secretariat of the Authority.

(*b*) THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (IMMUNITIES AND PRIVILIGES) ORDER 1996[7]

Made *14 February 1996*

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 14th day of February 1996

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament in accordance with section 10 of the International Organisations Act 1968[8] ("the Act") and has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by section 5 of the Act or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Part I

General

Citation and entry into force

1. This Order may be cited as the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996 and shall come into force on the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the United Nations Convention on the Law of the Sea of 10 December 1982[9] enters into force in respect of the United Kingdom.

Interpretation

2. In this Order:

"the 1961 Convention Articles" means the articles (being certain articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in schedule 1 to the Diplomatic Privileges Act 1964;[10]

"the Tribunal" means the International Tribunal for the Law of the Sea established in accordance with annex VI of the United Nations Convention on the Law of the Sea.

PART II

The Tribunal

3. Except in so far as in any particular case any privilege or immunity is waived by the Tribunal, the members of the Tribunal shall enjoy, when engaged on the business of the Tribunal, the like privileges and immunities as, in accordance with the 1961 Convention Articles, are accorded to the head of a diplomatic mission.

4. The members of the Tribunal and the Registrar of the Tribunal shall have exemption from income tax in respect of emoluments received by them as members or as the Registrar.

N. H. NICHOLLS
Clerk of the Privy Council

Explanatory note

(This note is not part of the Order)

This Order confers privileges and immunities o the members of the International Tribunal for the Law of the Sea. These privileges and immunities are conferred in accordance with annex VI of the United Nations Convention on the Law of the Sea (Cmnd. 8941). The Order will enable Her Majesty's Government to give effect to that Convention and will come into force on the date on which the Convention enters into force in respect of the United Kingdom.

(*c*) MERCHANT SHIPPING AND MARITIME SECURITY ACT 1997[11]

Maritime security, etc.

25. Schedule 4 (amendments of part III of the Aviation and Maritime Security Act 1990, which relates to the protection of ships and harbour areas against acts of violence) shall have effect.

26. (1) For the avoidance of doubt it is hereby declared that for the purposes of any proceedings before a court in the United Kingdom in respect of piracy, the provisions of the United Nations Convention on the Law of the Sea 1982 that are set out in schedule 5 shall be treated as constituting part of the law of nations.

(2) For the purposes of those provisions the high seas shall (in accordance with paragraph 2 of article 58 of that Convention) be taken to include all waters beyond the territorial sea of the United Kingdom or of any other state.

(3) The Tokyo Convention Act 1967 (so far as unrepealed) shall cease to have effect.

(4) Her Majesty may by Order in Council direct that subsections (1) to (3) and schedule 5 shall extend to the Isle of Man, any of the Channel Islands or any colony with such modifications, if any, as appear to Her to be appropriate.

(5) In section 39 of the Aviation Security Act 1982 (extension of 1982 Act outside United Kingdom), for subsection (2) (application of power in 1967 Act to section 5 of 1982 Act) there is substituted:

"(2) Subsection (4) of section 26 of the Merchant Shipping and Maritime Security Act 1997 (power to extend provisions about piracy to Isle of Man, Channel Islands and colonies) shall apply to section 5 of this Act as it applies to the provisions mentioned in that subsection."

(6) Nothing in this section affects the operation of any Order in Council made under section 8 of the Tokyo Convention Act 1967; but any such Order may be revoked as if made under subsection (4).

International bodies concerned with maritime matters

27. (1) In this section "the 1971 Fund" means the International Oil Pollution Compensation Fund established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18 December 1971.

(2) The termination of the membership of Her Majesty's Government in the United Kingdom of the 1971 Fund shall not affect the application to that Fund of section 1 of the International Organisations Act 1968.

28. (1) In this section "the Tribunal" means the International Tribunal" means the International Tribunal for the Law of the Sea established in accordance with annex VI of the United Nations Convention on the Law of the Sea.

(2) Except in so far as in any particular case any privilege or immunity is waived by the Tribunal, the members of the Tribunal shall enjoy, when engaged on the business of the Tribunal, the like privileges and immunities as, in accordance with the 1961 Convention Articles, are accorded to the head of a diplomatic mission.

(3) In subsection (2):

"the 1961 Convention Articles" means the articles (being certain articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in schedule 1 to the Diplomatic Privileges Act 1964;

"head of a diplomatic mission" shall be construed in accordance with those Articles.

(4) The members of the Tribunal and the Registrar of the Tribunal shall have exemption from income tax in respect of emoluments received by them as members or as the Registrar.

(5) Subsection (4) shall be taken to have come into force on 15 September 1996.

(6) If in any proceedings a question arises whether a person is or is not entitled to any privilege or immunity by virtue of this section, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact.

(7) Subsections (1) to (5) shall cease to have effect on the coming into force of the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996 (which makes provision corresponding to subsections (1) to (4) but does not come into force until the United Nations Convention on the Law of the Sea enters into force in respect of the United Kingdom).

Supplementary

29. (1) Schedule 6 (minor and consequential amendments) shall have effect.

(2) Schedule 7 (repeals and revocations) shall have effect.

30. (1) This Act, except section 4, extends to Northern Ireland.

(2) The provisions capable of being:

(*a*) Extended to the Isle of Man, any of the Channel Islands or any colony under section 315 of the 1995 Act, or

(*b*) Applied in relation to any of those places under section 141 or under or by virtue of any other provision of the 1995 Act,

include the amendments of that Act made by this Act.

(3) The provisions capable of being extended to the Isle of Man, any of the Channel Islands or any colony under section 51 of the Aviation and Maritime Security Act 1990 include the amendments of that Act made by this Act.

(4) Her majesty may by Order in Council direct that section 24 shall with such exceptions, adaptations and modifications (if any) as may be specified in the Order, extend to the Isle of Man, any of the Channel Islands or any colony.

31. (1) This Act may be cited as the Merchant Shipping and Maritime Security Act 1997.

(2) In this Act "the 1995 Act" means the Merchant Shipping Act 1995.

NOTES

[1]United Kingdom Statutory Instruments, 1996, No. 270.
[2]1968 c. 48.
[3]As amended by section 1 of the International Organisations Act 1981 (c. 9.).
[4]Cmnd. 8941.
[5]1964 c. 81.
[6]1979 c. 5.
[7]United Kingdom Statutory Instruments, 1996, No. 272.
[8]1968 c. 48.
[9]Cmnd. 8941.
[10]1964 c. 81.
[11]Ibid.

Chapter II

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

A. Treaty provision 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 FEBRUARY 1946

As at 31 December 1996, there were 137 States parties to the Convention.[2]

2. AGREEMENTS RELATING TO INSTALLATIONS AND MEETINGS

(*a*) Exchange of letters constituting an agreement concerning arrangements between the United Nations and the Government of Nepal regarding the Fourth Asia-Pacific Workshop on Regional Human Rights Arrangements, to be held at Kathmandu from 26 to 28 February 1996. Geneva, 22 and 25 January 1996[3]

I

LETTER FROM THE UNITED NATIONS

22 January 1996

I have the honour to refer to the discussions between officials of the United Nations Centre for Human Rights and representatives of His Majesty's Government of Nepal concerning the organization of the Fourth Asia-Pacific Workshop on Regional Human Rights Arrangements to be held in Kathmandu, 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 His Majesty's Government of Nepal (hereinafter referred to as "the Government"):

ARRANGEMENTS BETWEEN THE UNITED NATIONS AND HIS MAJESTY'S GOVERNMENT OF NEPAL REGARDING THE FOURTH ASIA-PACIFIC WORKSHOP ON REGIONAL HUMAN RIGHTS ARRANGEMENTS, TO BE HELD IN KATHMANDU FROM 26 TO 28 FEBRUARY 1996

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, independent national human rights institutions 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 Center for Human Rights will send to Kathmandu four officials to organize and direct the Workshop and will invite five international experts to participate in the Workshop as resource persons.

3. The United Nations shall meet the travel expenses and daily subsistence allowance in respect of the five international experts, the United Nations officials and a representative form each of the thirty-three Governments, while the rest of the Governments in the region shall meet the cost of their participants, as indicated in the attached list and 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: (*a*) injury to person or damage to property in conference or office premises provided for the Workshop; (*b*) the transportation provided by the Government; and (*c*) the employment for the Workshop of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

6. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which the Kingdom of Nepal 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 provided under articles 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 personnel invited by the United Nations, as well as 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 Kingdom of Nepal. 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 articles 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 this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations, or of any other applicable agreement, shall, unless the parties agree otherwise, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government and the third, who 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 His Majesty's Government of Nepal 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
Under-Secretary-General
United Nations Office at Geneva

II

Letter from the permanent mission of Nepal to the United Nations Office at Geneva

25 January 1996

I have the honour to acknowledge the receipt of your letter dated 22 January 1996 proposing an agreement between the United Nations and His Majesty's Government of Nepal, in connection with the organization of the Fourth Asia-Pacific Workshop on Regional Human Rights Arrangements in Kathmandu from 26 to 28 February 1996.

I have the further honour to confirm on behalf of His Majesty's Government the foregoing arrangements, and agree that your letter and this letter shall be regarded as constituting an agreement between His Majesty's Government of Nepal and the United Nations regarding the above-mentioned Workshop, which will enter into force on the date of this reply.

(Signed) Banmali Prasad Lacoul
Minister-Counsellor and Charge d'affaires a.i.

(*b*) Exchange of letters constituting an agreement between the United Nations and the Government of Croatia, supplementing the agreement regarding the United Nations and forces and operations in the Republic of Croatia. Zagreb, 26 January and 2 February 1996[4]

I

Letter from the United Nations

26 January 1996

I have the honour to refer to Security Council resolution 1037 (1996) of 15 January 1996, which the Council decided to establish a United Nations peace keeping operation for the region referred to in the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, signed on 12 November 1995 between the Government of the Republic of Croatia and the local Serbian community (the Basic Agreement), with both military and civilian components, under the name United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES).

I also have the honour to refer to Security Council resolution 1038 (1996) of 15 January 1996, by which the Council authorized the United Nations military observers to continue monitoring the demilitarization of the Prevlaka peninsula in accordance with resolutions 779 (1992) and 981 (1995) and paragraphs 19 and 20 of the report the Secretary General of 13 December 1995 (S/1995/1028).

In paragraph 13 of the resolution 1037 (1996), the Security Council called upon your Government to include UNTAES and the United Nations Liaison Office in Zagreb in the definition of "United Nations peace forces and operations in Croatia" in the present status, of, forces agreement concluded on 15 May 1995 between the United Nations and the Government of the Republic of Croatia (the SOFA).

In view of the above, I propose that the SOFA include in its definition of United Nations forces and operations in the Republic of Croatia; (*a*) "UNTAES", which means the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, established pursuant to Security Council resolution; (*b*) "the United Nations Liaison Office in Zagreh", as described in paragraph 44 of the Secretary, General's report dated 13 December 1995 (S/1995/1031), containing arrangements which were approved by the Security Council in resolution 1037 (1996) of 15 January 1996; and (*c*) the United Nations military observers who, pursuant to Security Council resolution 1038 (1996) of 15 January 1996, should continue monitoring the demilitarization of the Prevlaka peninsula.

In keeping with the spirit of the definition of the United Nations forces and operations in the SOFA, I also propose that the United Nations civilian office and the International Police Task Force (IPTF), both established pursuant to Security Council resolution 1035 (1995) of 21 December 1995 and subsequently called the United Nations Mission in Bosnia and Herzegovina (UNMIBH), and the United Nations Liaison Office in Belgrade be extended the necessary privileges and immunities, rights and facilities for the purpose of transiting, storage of equipment and supplies, or conducting official United Nations business in the territory of the Republic of Croatia.

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 Republic of Croatia, to take effect immediately.

(Signed) Kofi A. ANNAN
Special Representative to the Secretary-General
in the Former Yugoslavia

II

LETTER FROM THE GOVERNMENT OF THE REPUBLIC OF CROATIA

2 February 1996

I would like to inform you that the Republic of Croatia agrees to some proposals set out in your letter.

"In view of above, I propose that the SOFA a include in its definition of United Nations forces and operations in the Republic of Croatia: (*a*) "UNTAES", which means the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, established pursuant to Security Council

resolution 1037 (1996) of 15 January 1996 with the mandate described in the above, mentioned resolution; (*b*) "the United Nations Liaison Office in Zagreb", as described in paragraph 44 of the Secretary General's report dated 13 December 1995 (S/1995/1031), containing arrangements which were approved by the Security Council in resolution 1037 (1996) of 15 January 1996; and (*c*) the United Nations military observers who, pursuant to Security Council resolution 1038 (1996) of 15 January 1996, should continue monitoring the demilitarization of the Prevlaka peninsula."

And this affirmative reply constitute an Agreement on Amendment of the Status of Forces Agreement concluded on 15 May 1995 between the Republic of Croatia and the United Nations. The Republic of Croatia, also agrees, that the date of this letter of reply be considered as the date of entry into force of this Agreement.

With regard to the status of the United Nations civilian office and the International Police Task Force (IPTF), both established pursuant to Security Council resolution 1035 (1995) of 21 December 1995 and subsequently called the United Nations Mission in Bosnia and Herzegovina (UNMIBH), and the United Nations Liaison Office in Belgrade, the Republic of Croatia wishes to stress that their statistics regulated by the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946.

(Signed) Mate GRANIC
Deputy Prime Minister and Minister for Foreign Affairs

(*c*) Agreement between the United Nations and the Government of Germany concerning the occupancy and use of the United Nations premises in Bonn. Signed at New York on 13 February 1996[5]

Whereas of 10 November 1995 the United Nations and the Federal Republic of Germany concluded an Agreement concerning the headquarters of the United Nations Volunteers Programme (hereinafter referred to as "the Headquarters Agreement");

Whereas the Government of the Federal Republic of Germany (hereinafter referred to as "the Government") has offered to provide to the United Nations the Premises in Bonn owned by the Federal Republic of Germany, free of rent and on a permanent basis, as specified under this Agreement;

Whereas the United Nations has accepted the offer of the Government and has agreed to occupy and use the Premises;

Whereas the United Nations acknowledges that the offer of the Government to provide premises in Bonn to the Secretariat of the United Nations Framework Convention on Climate Change, free of rent and on a permanent basis, has been accepted by the Conference of the Parties to that Convention; and

Whereas the United Nations and the Government (hereinafter referred to as "the Parties") wish to conclude a Supplementary Agreement setting out the terms and conditions for the occupancy and use of the Premises in Bonn.

Have agreed as follows:

Article 1

DEFINITIONS

For the purpose of the present Agreement, the definitions in the Headquarters Agreement shall apply. In addition, the following definitions shall apply:

(*a*) "the Premises" means the property of the Federal Republic of Germany, being the buildings and structures, equipment and other installations and facilities, as well as the surrounding grounds, located on Martin-Luther-King Strasse 8, in Bonn, Federal Republic of Germany, as described in annex 1;

(*b*) "the representative of the United Nations" means the person designated to represent the United Nations for the purposes of this Agreement;

(*c*) The "intergovernmental entities institutionally linked to the United Nations" means the Secretariat of the United Nations Framework Convention on Climate Change and such other intergovernmental entities to be located on the Premises as may be agreed upon by the Parties.

Article 2

PURPOSES AND SCOPE OF THE AGREEMENT

The present Agreement serves to establish the terms and conditions under which the Premises transferred by the Government to the United Nations shall be occupied and used by the United Nations as the headquarters of the United Nations Volunteers Programme, and by other Offices of the United Nations, as well as by other intergovernmental entities institutionally linked to the United Nations.

Article 3

PREMISES

1. The Government hereby agrees to transfer the Premises permanently to the United Nations with the right to occupy and use the Premises, free of rent, for the purposes of and in accordance with the Headquarters Agreement and the present Agreement. Without prejudice to the foregoing, the Premises shall remain the property of the Federal Republic of Germany.

2. The Premises shall form part of the Headquarters district as defined in the Headquarters Agreement.

3. The United Nations shall have the right to quiet and peaceful occupancy and use of the Premises as provided under this Agreement, without undue interruptions and disturbances, for the conduct of its activities.

4. The Government shall make every effort to ensure that the use of the vicinity of the Premises shall not adversely affect the usefulness of the Premises to the United Nations.

5. The Government shall make the Premises available to the United Nations, as of 1 July 1996, together with an inventory list of the equipment provided by the Government to be agreed upon by the Parties.

6. The Government undertakes to ensure that prior to the move into the Premises, the buildings are properly prepared for occupancy and use by the United Nations Volunteers and, as appropriate, by the respective offices of the United Nations and by intergovernmental entities institutionally linked to the United Nations.

Article 4

Occupancy and use of the Premises

1. The Premises shall be occupied and used by the United Nations as the Headquarters of the United Nations Volunteers, by other offices of the United Nations, as well as by intergovernmental entities institutionally linked to the United Nations.

2. The United Nations shall make available appropriate space in the Premises to the Secretariat of the United Nations Framework Convention on Climate Change taking into account the offer of the Government to establish the headquarters of the Secretariat in Germany, as well as, subject to availability of space, to other intergovernmental entities institutionally linked to the United Nations.

3. The allocation of space in, the responsibilities for, and the administration of the Premises shall be determined by the United Nations in accordance with its policies and decisions; however, as far as the intergovernmental entities institutionally linked to the United Nations are concerned, this shall be in accordance with paragraph 4 below.

4. The terms and conditions under which the Premises shall be occupied and used by the intergovernmental entities institutionally linked to the United Nations shall be determined in separate arrangements between the United Nations and such entities. Such arrangements shall make provisions, inter alia, for adequate occupancy and use of the Premises and for proportionate sharing of the costs associated with all the relevant aspects of the occupancy, use and maintenance of the Premises, including insurance, repairs, security and other expenses, as provided under this Agreement.

Article 5

Maintenance, Restoration and Alterations

1. The Government shall be responsible, at its own expense, for the restoration, renovation and major repairs to the Premises, including structural repairs and replacements to the buildings, installations, fixtures and equipment, such as building control equipment, air conditioning and heating equipment, pipes, plumbing and electrical wiring.

2. The United Nations shall maintain the Premises in good repair and tenantable condition. For this purpose, the United Nations shall arrange for required inspections and report to the Government any necessary repairs which are the responsibility of the Government. Without derogation from the obligations of the Government as to major repairs, the United Nations shall be responsible, at its own expense, for the orderly operation and adequate maintenance of the Premises, including minor repairs in the interior of the buildings.

3. The United Nations may, with the consent of the Government, at its own expense, make alterations, attach fixtures and erect additions on the Premises.

4. A detailed distribution of the respective responsibilities of the Parties under this article is set out in annex 2.

Article 6

PUBLIC AND OTHER SERVICES FOR THE PREMISES

1. In accordance with article 11 of the Headquarters Agreement, the Government shall assist the United Nations and, at the request of the United Nations, shall use its good offices to cause the providers of services to:

(*a*) Install and maintain, on fair conditions and upon request of the representative of the United Nations, the public services needed by the United Nations, such as, but not limited to, postal, telephone and telegraphic services, electricity, water, gas, sewerage, collection of waste, fire protection, local transportation;

(*b*) Extend to the United Nations, in respect of utilities and services referred to in subparagraph (*a*) above, rates not less favourable than the rates accorded to essential agencies and organs of the Government;

(*c*) Consider the needs of the United Nations as being of equal importance with the similar needs of essential agencies and organs of the Government, in case of any interruption or threatened interruption of utilities and services referred to above.

2. Without prejudice to article 5 of the Headquarters Agreement, the United Nations shall, upon request, take the necessary measures to enable duly authorized representatives of the appropriate public and other services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the Premises and to enter the Premises in order to inspect, under conditions which shall not unreasonably disturb the carrying out of the functions of the United Nations. Underground constructions and obligatory services may be undertaken by the competent authorities within the Premises after consultation with and with the consent of the representative of the United Nations, and under conditions which shall not disturb the carrying out of the functions of the United Nations.

Article 7

DAMAGE TO OR DESTRUCTION OF THE PREMISES

1. The United Nations shall not be responsible for restoration or reconstruction of the Premises in case of damage or destruction by fire or other causes.

2. Should the Premises or any part thereof be damaged by fire or any other cause, the Government shall, in case of partial damage of the Premises, restore the damaged Premises. In the event that the Premises are totally destroyed or otherwise rendered unfit, as shall be agreed upon by the Parties, for further occupancy or use by the United Nations Volunteers or by other offices of the United Nations, or by the intergovernmental entities institutionally linked to the United Nations that are accommodated on the Premises, the Government shall provide them with other suitable premises.

Article 8

THIRD-PARTY LIABILITY CLAIMS

The United Nations may insure or self-insure to cover third-party liability claims arising from its occupancy and use of the Premises, attributable to the negligence or willful misconduct on the part of its own officials, employees, contractors or agents.

Article 9

VACATION OF THE PREMISES

In the even that the United Nations vacates the Premises, it shall surrender to the Government the Premises in as good a condition as when taken, reasonable wear and tear and damage by the elements, fire or any other cause excepted, it being understood that the United Nations shall not be required to restore the Premises to the shape and state existent prior to any alterations or changes that may have been executed by the United Nations or the Government in accordance with this Agreement.

Article 10

SETTLEMENT OF DISPUTES

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement shall be settled in accordance with article 26 of the Headquarters Agreement.

Article 11

GENERAL PROVISIONS

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

2. This Agreement shall cease to be in force in accordance with the procedure of paragraph 2 of article 27 of the Headquarters Agreement.

3. After being signed by the Parties, this Agreement shall enter into force on the same day as the Headquarters Agreement. It shall be applied provisionally as from the day of signature, as appropriate.

DONE at New York City, on 13 February 1996, in duplicate in the English and the German languages, both texts being equally authentic.

(*d*) Agreement between the United Nations and the Government of the United States of America concerning the surrender of persons to 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. Signed at The Hague on 5 October 1994[6]

The Government of the United States of America and 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. (hereinafter referred to as the "Tribunal").

Recalling the obligation of the United States, pursuant to the Statute of the Tribunal adopted by the United Nations Security Council in its resolution 827 (1993) 25 May 1993 (hereinafter referred to as the "Statute"), to surrender accused or convicted persons to the Tribunal, and

Desiring to facilitate the surrender of such persons,

Have agreed as follows:

Article 1. Obligation to surrender

1. The United States agrees to surrender to the Tribunal, pursuant to the provisions of this Agreement and the Statute, persons, including United States citizens, found in its territory whom the Tribunal has charged with our found guilty of a violation or violations within the competence of the Tribunal as defined in the Statute.

2. The requirements for a finding that a person is subject to surrender to the Tribunal are solely those specifically articulated in this Agreement. No additional conditions regarding or defences to surrender may be asserted by the person sought as barring such person's surrender to the Tribunal under this Agreement.

Article 2. Procedures

1. The Tribunal shall submit requests for surrender to the Embassy of the United States in the Netherlands or to the Embassy of the United States in another State in which the Tribunal may be temporarily situated.

2. Requests for surrender shall be supported by:

(*a*) Documents, statements or other types of information which describe the identity and probable location of the person sought;

(*b*) Information describing the essential facts and procedural history of the case;

(*c*) A description of the specific violation or violations referred to in the Statute for which surrender of the person is sought; and

(*d*) The documents, statements or other types of information specified in paragraph 3 or paragraph 4 of this article, as applicable.

3. A request for surrender of a person who is sought for prosecution shall also be supported by copies of the warrant of arrest and of the indictment and by information sufficient to establish that there is a reasonable basis to believe that the person sought has committed the violation or violations for which surrender is requested.

4. A request for surrender relating to a person who has been found guilty of the violation for which surrender is sought shall also be supported by:

(*a*) A copy of the judgement of conviction or, if such copy is not available, a statement by the Tribunal that the person has been found guilty;

(*b*) Information establishing that the person sought is the person to whom the finding of guilt refers; and

(*c*) A copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out.

5. If it appears that supplemental information is needed to meet the requirements of this article, the United States shall request such supplemental information from the Tribunal. In such a case, any proceedings regarding the surrender may be continued, and the person sought may be detained, for such period as may be necessary to afford the Tribunal a reasonable opportunity to provide the supplemental information requested.

Article 3. Provisional arrest

1. In case of urgency, the Tribunal may request the provisional arrest of the person sought pending presentation of the request for surrender. A request for provisional arrest may be presented to the Embassy of the United States in the Netherlands or may be transmitted directly by the Prosecutor of the Tribunal to the United States Department of Justice.

2. The application for provisional arrest shall contain:

(*a*) A description of the person sought and information regarding the probable location of such person;

(*b*) A brief statement of the essential facts of the case, including, if possible, the time and location of the offence;

(*c*) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought, and a description of the specific violation or violations set forth in the Statute of which the person has been accused or convicted; and

(*d*) A statement that a request for surrender for the person sought will follow.

3. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest if the United States has not received the formal request for surrender and the supporting documents specified under Article 2 of this Agreement.

4. The fact that the person sought has been discharged from custody pursuant to paragraph 3 of this article shall not prejudice the subsequent rearrest and surrender of that person if the surrender request and supporting documents are delivered at a later date.

Article 4. Transit

1. The United States may authorize transportation through its territory of a person, including a United States citizen, surrendered to the Tribunal by another State. A request by the Tribunal for transit shall be transmitted to the Embassy of the United States in the Netherlands or in another State in which the Tribunal may be temporarily situated, or directly to the United States Department of Justice by the Prosecutor of the Tribunal. The request for transit shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be detained in custody during the period of transit.

2. No authorization is required where air transportation is used and no landing is scheduled on the territory of the United States. If an unscheduled landing occurs on the territory of the United States, the United States may require a request for transit as provided in paragraph 1. The United States shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

Article 5. Representation and expenses

1. Where the Tribunal makes a request for surrender of a person, the United States shall as necessary provide assistance and appear in court in connection with such a request.

2. The Tribunal shall bear the expenses related to the translation of documents and the transportation of the person surrendered, unless the Parties agree otherwise. The United States shall pay all other expenses incurred by reason of the surrender proceedings.

Article 6. Entry into force

This Agreement shall enter into force immediately after the United States has notified the Tribunal that is domestic legal requirements have been met.

In witness whereof, the undersigned, being duly authorized by their respective Government or international organization, have signed this Agreement.

Done at The Hague, in duplicate, this fifth day of October 1994, in the English language.

For the Government of the United States of America:	For the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia since 1991
(Signed) K. Terry DORNBUSH	*(Signed)* Theo VAN BOVEN

(*e*) Exchange of letters between the United Nations and the Government of Bosnia and Herzegovina constituting an agreement related to the statute of the Liaison Office of the Prosecutor of the International Tribunal and its staff. 30 January 1996 and 16 February 1997[7]

I

LETTER FROM THE UNITED NATIONS

30 January 1996

I have the honour to refer to Security Council resolution 827 (1993) of 25 May 1993, by which the Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 (hereinafter referred to as the "International Tribunal").

I further have the honour to refer to the Memorandum of Understanding Regarding Cooperation between the Government of the Republic of Bosnia and Herzegovina and the Prosecutor of the International Tribunal of 3 December 1994, by which the Government of the Republic of Bosnia and Herzegovina agreed to assist the International Tribunal in establishing a liaison office in suitable secure accommodation to be used by investigators of the Prosecutor's Office as a base for their operations in the territory of the Republic of Bosnia and Herzegovina.

Accordingly, and in order to facilitate the fulfillment of the purposes of the Liaison Office, I propose that your Government, in implementation of its obligation under Article 105 of the Charter of the United Nations, extend to the Liaison Office, as an organ of the United Nations, extend to the Liaison Office, as an organ of the United Nations, its property, funds, assets and personnel, the privileges and immunities provided in the Convention on the Privileges and Immunities of the United Nations (the Convention), to which the Republic of Bosnia and Herzegovina is a party.

In view of the importance of the functions which the Liaison Office will perform in the Republic of Bosnia and Herzegovina, I propose that your Government extend to:

—The Liaison Officer, the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law;

—The officials of the Prosecutor's Office assigned to serve with the Liaison Office, the privileges and immunities provided under articles V and VII of the Convention;

—Other persons assigned to serve with the Liaison Office whose names will be communicated to the Government for that purpose, the privileges and immunities accorded to experts on mission for the United Nations under article VI of the Convention.

The privileges and immunities necessary for the fulfillment of the functions of the Liaison Office also include the following rights and facilities:

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

(ii) The unrestricted freedom of movement throughout the country of personnel, property, equipment and means of transport;

(iii) Access to all documentary material relevant for the effective operation of the Liaison Office;

(iv) The right to have direct contact with central and local authorities, government agencies including the armed forces, intergovernmental and non-governmental organizations, private institutions and individuals;

(v) The right to question victims and witnesses, to collect evidence and any useful information, and to conduct on-site investigations;

(vi) The right to have access to all prisons, detention centres and places of interrogation, in coordination with the Ministry of Justice of the Republic of Bosnia and Herzegovina. Members of the Liaison Office shall have the possibility to speak in private with any person detained or present in such places.

(vii) The right to make arrangements through its own facilities for eh transfer of all databases and all information collected;

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

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

(x) The right to unrestricted communication by radio, satellite or other forms of communication with United Nations Headquarters and between various offices and to connect with the United Nations radio and satellite network on the registered waves for the United Nations and others assigned by the Government of the Republic of Bosnia and Herzegovina, as well as by telephone, telegraph or by other means; and

(xi) The right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the Liaison Office. The Government of the Republic of Bosnia and Herzegovina shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of the Liaison Office and its members.

Furthermore, in accordance with the provisions of article II of the Convention, the property, funds and assets of the Liaison Office, 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. The archives of the Liaison Office, and in general, all documents belonging to, used or held by it, wherever located in the Republic of Bosnia and Herzegovina and by whomsoever held, shall be inviolable.

It is understood that the Government of the Republic of Bosnia and Herzegovina shall, to the extent possible, provide the Liaison Office such premises as may be required for conducting the official and administrative activities of the Liaison Office throughout the territory of the Republic of Bosnia and Herzegovina. All premises used by the Liaison Office and its members shall be inviolable and subject to the exclusive control and authority of the Liaison Officer.

It is further understood that, upon the request of the Liaison Officer, the Government of the Republic of Bosnia and Herzegovina shall take all the effective and adequate measures to ensure the appropriate security, safety and protection of the Liaison Office, its members, premises and property.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an agreement between the United Nations and the Republic of Bosnia and Herzegovina on the status of the Liaison Office of the Prosecutor of the International Tribunal and its personnel with immediate effect.

(Signed) Boutros BOUTROS-GHALI
Secretary-General

II

LETTER FROM THE PERMANENT MISSION OF BOSNIA AND HERZEGOVINA TO THE UNITED NATIONS

16 February 1996

Pursuant to your later dated 30 January 1996, in which you refer to the establishment of the Liaison Office of the Prosecutor of the International Tribunal and in particular the provisions dealing with privileges and immunities of the Office and its personnel, as proposed in your letter, I have the honor to inform you that the Government of the Republic of Bosnia and Herzegovina fully agrees to the above, mentioned provisions.

The Government of the Republic of Bosnia and Herzegovina agrees that your letter of 30 January 1996 and this reply thereto constitute an agreement between the United Nations and the Republic of Bosnia and Herzegovina on the status of the Liaison Office of the Prosecutor of the International Tribunal and its personnel with immediate effect.

(Signed) Ivan Z. MISIC
Charge d'affaires a.i.

(*f*) Memorandum of Understanding between the United Nations and the Government of the United States of America for the contribution of civilian personnel to the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium. Signed at New York on 26 March 1996.[8]

Whereas the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) was established pursuant to Security Council resolution 1037 (1996) of 15 January 1996 as a United Nations peacekeeping operation with both military and civilian components;

Whereas the Secretary-General welcomes contributions by Governments of Member States in terms of equipment and personnel to UNTAES;

Whereas the Government of the United States of America has agreed to make available to UNTAES the services of civilian personnel to assist Transitional Administrator, who has overall authority over the civilian and military components of UNTAES;

Whereas by an Agreement concluded between the United Nations and the Government of Croatia by Exchange of Letters dated 26 January and 9 February 1996,[9] the Government of Croatia agreed to include UNTAES in the definition of "United Nations Peace Forces and Operations in Croatia" in the present Status of Forces Agreement concluded on 15 May 1995 between the United Nations and the Government of Croatia (the Status Agreement);

Now therefore the United Nations and the Government of the United States of America (hereinafter: "the Parties") have agreed as follows:

Article I

OBLIGATIONS OF THE GOVERNMENT

1. The Government of the United States of America (hereinafter: "the Government") agrees to make available for the duration and purposes of this Agreement the services of up to 7 of its officials (hereinafter: "United States Personnel") listed in annex I hereto. Changes and modifications to the annex may be made from time to time with the agreement of the Parties.

2. The Government undertakes to pay all expenses in connection with the services of the United States Personnel, including salaries, travel costs to and from the mission area, and allowances and other benefits to which they are entitled, except as hereinafter provided.

3. The Government undertakes to ensure that during the entire period of service under this Agreement, adequate medical and life insurance as well as insurance coverage for service incurred illness, disability or death, with extended war risk insurance coverage, is made available to the U.S. Personnel.

Article II

OBLIGATIONS OF THE UNITED NATIONS

1. The United Nations shall provide the United States Personnel with office space, support staff, equipment and other resources necessary to carry out the tasks assigned to them.

2. During any mission assignment of the United States Personnel away from their primary duty station, the United Nations shall be responsible for the payment of travel costs from and to the primary duty station.

3. The United Nations shall pay to the United States Personnel, during their mission assignment referred to in paragraph 2 above, a daily subsistence allowance (DSA) in accordance with the schedule of rates established for United Nations personnel.

4. The United Nations shall provide to the United States Personnel, through UNTAES, such protection as may be required for the performance of their functions.

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

Article III

OBLIGATIONS OF THE UNITED STATES PERSONNEL

1. The Government agrees to the terms and obligations specified below, and shall, as appropriate, ensure that United States Personnel performing functions under this Agreement comply with these obligations:

(*a*) The United States Personnel shall perform their functions under the authority of the Secretary-General, and in full compliance with the instructions of the Transitional Administrator, and any person acting on his behalf;

(*b*) The United States Personnel shall perform civilian and political functions relevant to the implementation of the mandate of UNTAES;

(*c*) The United States Personnel shall undertake to respect the impartiality and independence of UNTAES and shall neither seek nor accept instructions regarding the functions to be performed under this Agreement from any Government or from any authority external to UNTAES;

(*d*) The United States Personnel shall refrain from any conduct which would adversely reflect on UNTAES or the United Nations and shall not engage in any activity which is incompatible with the aims and objectives of the United Nations;

(*e*) The United States Personnel shall comply with all rules, regulations, instructions or directives issued by UNTAES;

(*f*) The United States Personnel shall exercise the utmost discretion in all matters relating their functions and shall not communicate, at any time, without

the authorization of the Transitional Administrator to the media or to any institution, person, Government or other authority external to UNTAES, any information that has not been made public, and which has become known to them by reason of their association with UNTAES. They shall not use any such information the authorization of the Transitional Administrator, and in any event, such information shall not be used for personal gain. These obligations do not lapse upon expiration of this Agreement;

(*g*) The members of the United States Personnel shall sign an undertaking in accordance with annex II hereto.

Article IV

LEGAL STATUS OF THE UNITED STATES PERSONNEL

1. The United States Personnel shall not be considered in any respect as being officials or staff of the United Nations.

2. The United States Personnel shall be considered experts on mission within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946. As such, they shall be considered members of UNTAES and shall enjoy in addition to the privileges and immunities of United Nations experts provided in article VI of the above mentioned Convention, the relevant privileges and immunities, rights and facilities provided for under the Status Agreement.

Article V

CONSULTATION

The United Nations and the Government shall consult with each other in respect of any matter that from time to time may arise in connection with this Agreement.

Article VI

SETTLEMENT OF DISPUTES

Any dispute, controversy or claim arising out of, or relating to, this agreement shall be settled by negotiation or other mutually agreed mode of settlement.

Article VII

TERMINATION

This Agreement may be terminated by either Party upon one month's written notice to the other Party.

Article VIII

AMENDMENT

This Agreement may be amended by written agreement of both Parties. Each Party shall give full consideration to any proposal for an amendment made by the other Party.

Article IX

ENTRY INTO FORCE, DURATION

This Agreement shall enter into force upon signature by the Parties, and shall remain in force for the duration of the UNTAES mission or as otherwise agreed between the Parties.

IN WITNESS WHEREOF, the respective representatives of the United Nations and of the Government of the United States of America have signed this Agreement.

DONE in New York, this 26th day of March in the year 1996, in 2 originals in the English language.

ANNEX I

List of the United States Personnel

[Individual names not included]

ANNEX II

Undertaking

I, the undersigned, as a member of the United States Personnel made available by the Government of the United States of America to the United Nations pursuant to the Memorandum of Understanding between the United Nations and the Government of the United States of America for the contribution of civilian personnel to UNTAES, hereby undertake to abide, consistent with applicable law, by the following:

(*a*) I understand that, as a member of the United States Personnel, I shall not be considered in any respect as being an official or a staff member of the United Nations;

(*b*) I further understand that, while in the mission area, I will be considered as an "expert on mission" within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946. As such, I shall be entitled to the relevant privileges and immunities, rights and facilities provided for under that Convention and the Status of Forces Agreement concluded on 15 May 1995 between the United Nations and the Government of Croatia;

(*c*) I shall perform my functions under the authority, and in full compliance with the instructions of the Transitional Administrator, or any person acting on his behalf;

(*d*) I shall respect the impartiality and independence of UNTAES, and will not seek nor accept instructions regarding my functions as a member of the United States Personnel from any Government or from any authority external to UNTAES or the United Nations;

(*e*) I shall refrain from any conduct which would adversely reflect on UNTAES or the United Nations and shall not engage in any activity that is incompatible with the aims and objectives of the United Nations or the exercise of my functions;

(*f*) I shall exercise the utmost discretion in all matters relating to my functions and shall not communicate, at any time, without the authorization of the Transitional Administrator to the media or to any other institution, person, Government or other authority external to UNTAES, any information that has not been made public, and which has become known to me by reason of my functions. I shall not use any such information without the authorization of the Transitional Administrator and in any event, such information shall not be used for personal gain. These obligations do not lapse upon termination of my assignment.

(*g*) I shall comply with all rules, regulations, procedures, instructions or directives issued by UNTAES.

Name printed in block letters

Signature

Date

(*g*) Agreement between the United Nations and the Government of Turkey regarding arrangements for the United Nations Conference on Human Settlements (Habitat II). Signed at Ankara on 23 April 1996.[10]

Whereas the General Assembly of the United Nations by its resolution 47/180 of 22 December 1992 decided "to convene the United Nations Conference on Human Settlements (Habitat II) (hereinafter referred to as the Conference) from 3 to 14 June 1996, at the highest possible level of participation";

Whereas the General Assembly, in the same resolution, noted with appreciation the generous offer made by the Government of Turkey (hereinafter referred to as "the Government") to act as host to the Conference and decided that the Conference will be held in Turkey;

Whereas the Conference has, among other objectives, in the long term "to arrest the deterioration of global human settlements conditions and ultimately create conditions for achieving improvements in the living environment of all people on a sustainable basis";

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

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

Article I

PLACE AND DATE OF THE CONFERENCE

The Conference shall be held at Istanbul, Turkey, at the Lutfi Kirdar International Convention Centre, and its annexes, from 3 to 14 June 1996, with preconference consultations taking place on 1 and 2 June.

Article II

PARTICIPATION IN THE CONFERENCE

1. Participation in the Conference shall be open to the following:

(*a*) Representatives of States;

(*b*) Observers from organizations which have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the General Assembly;

(*c*) Representatives of the interested organs of the United Nations;

(*d*) Representatives of the interested specialized agencies and of the International Atomic Energy Agency;

(*e*) Observers from relevant intergovernmental organizations;

(*f*) Representatives of local authorities in consultation with national associations of local authorities;

(*g*) Observers from relevant and competent non-governmental organizations in consultative status with the Economic and Social Council and other non-governmental organizations accredited to the Conference by the Preparatory Committee for the Conference or the Conference itself;

(*h*) Individual experts and consultants in the field of human settlements invited by the United Nations;

(*i*) Officials of the secretariat of the Conference and of the United Nations Secretariat;

(*j*) Other persons invited by the United Nations, including eminent persons invited by the Secretary-General.

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

3. The public meetings of the Conference shall be open to representatives of information media accredited by the United Nations at its discretion.

Article III

PREMISES, EQUIPMENT, UTILITIES AND SUPPLIES

1. The Government shall provide, at its own expense, for as long as required for the Conference, the necessary premises, including conference rooms, delegates' and interpreters' lounges, suitable office space, storage areas and other related facilities and requirements (as specified in annexes – attached hereto.)

2. The premises and facilities referred to under paragraph 1 above shall remain at the disposal of the United Nations 24 hours a day throughout the Conference and for such additional time in advance of the opening and after the closing of the Conference as the United Nations, in consultation with the Government, shall deem necessary for the preparation and settlement of all matters connected with the Conference.

3. The Government shall, at its own expense, furnish, equip and maintain in good repair all the aforesaid rooms and facilities in a manner 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 languages of the United Nations and shall have facilities for sound recordings in those languages, in accordance with annex III.

4. The Government shall, at its own expense, furnish, equip and maintain such equipment as word processors and typewriters with keyboards in the languages needed, dictating, transcribing, reproduction and such other equipment and office supplies as are necessary for the effective conduct of the Conference and/or use by the press representatives covering the Conference.

5. The Government shall install, at its own expense, within the conference area, restaurant facilities, a bank, a post office, telephone, telefax and telex facilities, information and travel facilities, as well as a secretarial service center, equipped in consultation with the United Nations, for the use of delegations to the Conference and press on a commercial basis. Registration facilities will be provided outside the conference area.

6. The Government shall install, at its own expense, facilities for written press coverage, film coverage, radio and television coverage of the proceedings, to the extent required by the United Nations. (annex III).

7. In addition to the press, film, radio and television broadcasting facilities mentioned in paragraph 6 above, the Government shall provide, at its own expense, a press working area; a briefing room for correspondents; radio and television studios and areas for interviews and programme preparation.

8. The Government shall bear the cost of all necessary utility services, including local telephone communications, of the secretariat of the Conference and its communications by telex, telephone, telefax, telex and electronic communications system between the secretariat of the Conference and United Nations offices when such communications are made or authorized by, or on behalf of, the Secretary-General of the Conference, including official United Nations information cables and electronic mail between the Conference site, and United Nations information cables and electronic mail between the Conference site, and United Nations Headquarters in New York and the United Nations Office at Geneva or other established headquarters or appropriate United Nations offices, including the United Nations for Human Settlements (Habitat) at Nairobi and other offices of the Centre, and the various United Nation Information centres.

9. The Government shall bear the cost of the 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 functioning of the Conference which are not provided locally by the Government. The United Nations shall determine the mode of shipment of such equipment and supplies.

10. Premises and facilities provided in accordance with this article may be made available, in an adequate manner, to the representatives of local authorities and the observers from the non-governmental organizations referred to in article II above for the conduct of their activities relating to their contribution to the Conference.

Article IV

MEDICAL FACILITIES

1. Medical facilities adequate for first aid in emergencies shall be provided by the Government, at its own expense, within the conference area.

2. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital.

Article V

ACCOMMODATION

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

Article VI

TRANSPORT

1. The Government shall ensure the availability of adequate transportation for all Conference participants and United Nations staff to and from the airport for three days before and two days after the Conference as well as transportation to and from the principal hotels and the Conference premises for the duration of the Conference.

2. The Government, in consultation with the United Nations, shall provide at its expense an adequate number of cars with drivers for official use by the principal officers and the secretariat of the Conference, as well as such other local transportation as is required by the secretariat in connection with the Conference.

Article VII

POLICE PROTECTION

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

Article VIII

LOCAL PERSONNEL FOR THE CONFERENCE

1. The Government shall appoint an official who shall act as a liaison officer between the Government and the United Nations and shall be responsible, in consultation with the Secretary-General of the Conference, for making the necessary arrangements for the Conference as required under this Agreement.

2. The Government shall engage and provide at its own expense the local personnel required to perform services for the United Nations in addition to the United Nations staff as specified in Annex v of this Agreement:

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

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

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

(*d*) To provide custodial and maintenance services for the equipment and premises made available in connection with the Conference.

3. The Government shall arrange, at its own expense, at the request of the Secretary General of the Conference or of an official acting on behalf, for some of the local staff referred to in paragraph 2 above to be available before and after the closing of the Conference, as required by the United Nations.

4. The Government shall arrange, at its own expense, at the request or on behalf of the Secretary-General of the Conference, for adequate numbers of the local personnel referred to in paragraph 2 above to be available to maintain such night time service as may be required in connection with the Conference.

Article IX

FINANCIAL ARRANGEMENTS

1. The Government, in addition to the financial responsibility provided for elsewhere in this Agreement, shall bear the actual additional costs directly or indirectly involved in holding the Conference in Turkey rather than at the headquarters of the United Nations Centre for Human Settlements (Habitat) at Nairobi, Kenya. Such additional costs, which are provisionally estimated at US $280,000, shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations officials assigned by the Secretary-General to undertake preparatory visits to Turkey and to attend the Conference, as well as the costs of shipment and supplies not readily available locally, as determined in consultations between the host Government and the United Nations. Arrangements for such travel and shipment shall be made by the secretariat of the Conference in accordance with the Financial Regulations and Rules and the Staff Regulations and Rules of the United Nations, and related administrative practices in regard to travel standards, baggage allowances, subsistence payments (per diem) and terminal expenses.

2. The Government shall, not later than 30 April 1996, deposit with the United Nations the sum of US $280,000, representing the total estimated costs referred to in paragraph 1 of this Article, less any advance payment made by the Government to the United Nations.

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

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

5. After the conclusion of the Conference, the United Nations shall give the Government a detailed set of accounts showing the actual additional costs paid by the United Nations and to be borne by the Government pursuant to paragraph 1 of this article. These costs shall be expressed at the time the United Nations paid the cost. The United Nations, on the basis of this detailed set of accounts, shall refund to the Government any funds unspent out of the deposit or advances referred to, respectively, in paragraphs 2 and 3 of this article. Should the actual additional costs exceed the sum of the deposit and advances, the Government will remit the outstanding balance within one month of the receipt of the detailed accounts. The final accounts will be subject to audit as provided in the Financial Regulations and Rules of the United Nations, and the final adjustment of accounts will be subject to any observations which may arise from the audit carried out by the Board of Auditors, whose determination shall be accepted as final by both the United Nations and the Government.

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, except where it is agreed by Parties hereto that such damage, loss or injury is caused by the gross negligence or willful misconduct of United Nations personnel.

Article XI

PRIVILEGES AND IMMUNITIES

1. The Convention on the Privileges and Immunities of the United Nations, to which Turkey acceded on 22 August 1950, 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(i) and 2, above shall enjoy the privileges and immunities provided under articles V and VII of the Convention, and any experts on mission for the United Nations in connection with the Conference referred to in article II, paragraph 1(h), shall enjoy the privileges and immunities provided under articles VI and VII of the Convention.

2. The participants referred to in article II, paragraph 1 (*b*), (*c*), (*e*) 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. The participants from the local authorities and non-governmental organizations referred to in article II, paragraph 1(*f*) and (*g*), 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 their participation in the Conference.

4. 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.

5. The representatives of the press and other information media shall enjoy the facilities necessary for the independent exercise of their functions 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, and all those invited or accredited to the Conference shall be covered, as appropriate, by the provisions of Article 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations.

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

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

9. 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 and winding-up stages.

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

Article XII

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

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, 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 two other 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 decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

Article XIV

FINAL PROVISIONS

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

2. This Agreement shall enter into force immediately upon signature by the Parties and shall remain in force for the duration of the pre-Conference, the Conference proper and for such period thereafter as is necessary for all matters relating to any of its provisions to be settled.

Signed this 23rd day of April 1996 at Ankara.

(Signed)	*(Signed)*
For the United Nations:	For the Government of Turkey:
Wally N'Dow Executive Director United Nations Centre for Human Settlements	Huseyin CELEM Ambassador Plenipotentiary Permanent Representative of Turkey to the United Nations

(*h*) Exchange of letters constituting an agreement between the United Nations and the Government of Sweden concerning arrangements for the Sixth United Nations International Training Course on Remote Sensing Education for Educators, organized in cooperation with the Government of Sweden, to be held in Stockholm and Kiruna from 6 May to 14 June 1996. Signed at Vienna, 16 April and 13 May 1996.[11]

I

LETTER FROM THE UNITED NATIONS

16 April 1996

I have the honour to refer to resolution 50/27 adopted on 6 December 1995, and in particular General Assembly to paragraphs 23 and 24, 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), and reaffirmed its approval of the recommendations 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 50/27 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 1996.

The United Nations has received with appreciation the offer from Your Excellency's Government to host, as it has in the past, the Sixth United Nations International Training Course on Remote Sensing Education for Educators, which will be organized in cooperation with the Swedish International Development Cooperation Agency (SIDA) 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 6 May to 14 June 1996. Twenty-six educators from the educational communities in developing countries will participate in the training course.

With the present letter, I seek your Government's agreement to the following:

1. The Government of Sweden and the United Nations will finance the international travel of thirteen participants each, for a total of twenty-six.

2. The Government of Sweden will provide room, board, comprehensive insurance, local transportation and an allowance for incidental expenses in Sweden for all 26 participants.

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

(*b*) Without prejudice to the provision of the Conventions on the Privileges and Immunities of the United Nations and of the 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;

(*c*) 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.

4. 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. Upon presentation by the United Nations of a list of participants well in advance, visas and entry permits, where required, shall be granted free of charge and as promptly as possible.

5. It is further understood that your Government will be responsible for dealing with any claim against the United Nations arising out of:

(*a*) Injury to persons or damages to property in conference or office premises provided for the Training Course;

(*b*) The transportation provided by the Government;

(*c*) 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 the Government that such claims arise from the gross negligence or willful misconduct of such persons.

6. 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 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 the 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 of the United Nations Office at Vienna

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF SWEDEN TO THE UNITED NATIONS OFFICE AT VIENNA

13 May 1996

In reply to your letter of April 16, 1996, I have the honour to inform you that the Government of Sweden has decided to conclude an agreement concerning the arrangements for the Sixth 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) Björn SKALA
Ambassador
Permanent Representative

(*i*) Memorandum of Understanding between the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995). Signed at New York on 20 May 1996[12]

Section I

General provisions

1. The purpose of this Memorandum of Understanding is to ensure the effective implementation of Security Council resolution 986 (1995) (hereinafter the Resolution).

2. The Distribution Plan referred to in paragraph 8 (*a*) (ii) of the Resolution, which has to be approved by the Secretary-General of the United Nations, constitutes an important element in the implementation of the Resolution.

3. Nothing in the present Memorandum should be construed as infringing upon the sovereignty or territorial integrity of Iraq.

4. The provisions of the present Memorandum pertain strictly and exclusively to the implementation of the Resolution and, as such, in no way create a precedent. It is also understood that the arrangement provided for in the Memorandum is an exceptional and temporary measure.

Section II

Distribution Plan

5. The Government of Iraq undertakes to effectively guarantee equitable distribution to the Iraqi population throughout the country of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) purchased with the proceeds of the sale of Iraqi petroleum and petroleum products.

6. To this end, the Government of Iraq shall prepare a Distribution Plan describing in detail the procedures to be followed by the competent Iraqi authorities with a view to ensuring such distribution. The present distribution system of such supplies, the prevailing needs and humanitarian conditions in the various governorates of Iraq shall be taken into consideration with due regard to the sovereignty of Iraq and the national unity of its population. The plan shall include a categorized list of the supplies and goods that Iraq intends to purchase and import for this purpose on a six-month basis.

7. The part of the Distribution Plan related to the three northern governorates of Arbil, Dihouk and Suleimaniyeh shall be prepared in accordance with annex I, which constitutes an integral part of this Memorandum.

8. The Distribution Plan shall be submitted to the Secretary-General of the United Nations for approval. If the Secretary-General is satisfied that the plan adequately ensures equitable distribution of humanitarian supplies to the Iraqi population throughout the country, he will so inform the Government of Iraq.

9. It is understood by the Parties to this Memorandum that the Secretary-General will not be in a position to report as required in paragraph 13 of the Resolution unless the plan prepared by the Government of Iraq meets with his approval.

10. Once the Secretary-General approves the plan, he will forward a copy of the categorized list of the supplies and goods, which constitutes a part of the plan, to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait (hereinafter the 661 Committee) for information.

11. After the plan becomes operational, each Party to the present Memorandum may suggest to the other for its consideration a modification to the plan if it believes that such adjustment would improve the equitable distribution of humanitarian supplies and their adequacy.

Section III

ESTABLISHMENT OF THE ESCROW ACCOUNT AND AUDIT OF THAT ACCOUNT

12. The Secretary-General, after consultations with the Government of Iraq, will select a major international bank and establish there the escrow account described in paragraph 7 of the Resolution, to be known as "the United Nations Iraq Account" (hereinafter the "Iraq Account"). The Secretary-General will negotiate the terms of this account with the bank and will keep the Government of Iraq fully informed of his actions in choosing the bank and opening the account. All transactions and deductions mandated by the Security Council under paragraph 8 of the Resolution shall be made from the Iraq Account, which will be administered in accordance with the relevant Financial Regulations and Rules of the United Nations.

13. The Iraqi authorities might designate a senior banking official to liaise with the Secretariat of the United Nations on all banking matters relating to the Iraq Account.

14. In accordance with the United Nations Financial Regulations, the Iraq Account will be audited by the Board of Auditors, who are external independent public auditors. As provided for in the Regulations, the Board of Auditors will issue periodic reports on the audit of the financial statements relating to the account. Such reports will be submitted by the Board to the Secretary-General, who will forward them to the 661 Committee and to the Government of Iraq.

15. Nothing in the Memorandum shall be interpreted to create a liability on the part of the United Nations for any purchase made by the Government of Iraq or any agents acting on its behalf pursuant to the provisions of the Resolution.

Section IV

SALE OF PETROLEUM AND PETROLEUM PRODUCTS ORIGINATING IN IRAQ

16. Petroleum and petroleum products originating in Iraq will be exported via the Kirkuk-Yumurtalik pipeline through Turkey and from the Mina al-Bakr oil terminal. The 661 Committee will monitor the exports through those outlets to ensure that they are consistent with the Resolution. Transportation costs in Turkey will be covered by an additional amount of oil, as foreseen in the Resolution and in accordance with procedures to be established by the 661 Committee. The arrangement between Iraq and Turkey concerning the tariffs and payment modalities for the use of Turkish oil installations has been provided to the 661 Committee.

17. Each export of petroleum and petroleum products originating in Iraq shall be approved by the 661 Committee.

18. Detailed provisions concerning the sale of Iraqi petroleum and petroleum products are contained in annex II, which constitutes an integral part of this Memorandum.

Section V

PROCUREMENT AND CONFIRMATION PROCEDURES

19. The purchase of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs of the Iraqi population throughout the country, as referred to in paragraph 20 below, be carried out by the Government of Iraq, will follow normal commercial practice and be on the basis of the relevant resolutions of the Security Council and procedures of the 661 Committee.

20. The purchase of humanitarian supplies for the three northern governorates of Arbil, Dihouk and Suleimaniyeh, as provided for in the Distribution Plan, will be carried out in accordance with annex I.

21. The Government of Iraq will, except as provided for in paragraph 20, contract directly with suppliers to arrange the purchase of supplies, and will conclude the appropriate contractual arrangements.

22. Each export of goods to Iraq shall be at the request of the Government of Iraq pursuant to paragraph 8 (*a*) of the Resolution. Accordingly, exporting States will submit all relevant documentation, including contracts, for all goods to be exported under the Resolution to the 661 Committee for appropriate action according to its procedures. It is understood that payment of the supplier from the Iraq Account can take place only for items purchased by Iraq that are included in the categorized list referred to in section II of the present Memorandum. Should exceptional circumstances arise, applications for the export of additional items may be submitted to the 661 Committee for its consideration.

23. As noted above, the 661 Committee will take action on applications for the export of goods to Iraq in accordance with its existing procedures subject to future modifications under paragraph 12 of the Resolution. The 661 Committee will inform the Government of Iraq, requesting States, and the Secretary-General of the actions taken on the requests submitted.

24. After the 661 Committee has taken action on the applications for export in accordance with its procedures, the Central Bank of Iraq will request the bank holding the Iraq Account to open irrevocable letters of credit in favor of the beneficiaries. Such requests shall be referred by the bank holding the Iraq Account to the United Nations Secretariat for approval of the opening of the letter of credit by the latter bank, allowing payment from the Iraq Account upon presentation of credit-conform documents. The letter of credit will require as condition of payment, inter alia, the submission to the bank holding the Iraq Account of the documents to be determined by the procedures established by the 661 Committee, including the confirmations by the agents referred to in paragraph 25 below. The United Nations, after consultations with the Government of Iraq, shall determine the clause to be inserted in all purchase orders, contracts and letters of credit regarding payment terms from the Iraq Account. All charges incurred in Iraq are to be borne by the applicant, whereas all charges outside Iraq are for the account of the beneficiary.

25. The arrival of goods l Iraq purchased under the plan will be confirmed by independent inspection agents to be appointed by the Secretary-General. No payments can be made until the independent inspection agents provide the Secretary-General with authenticated confirmation that the exported goods concerned have arrived in Iraq.

26. The independent inspection agents may be stationed at relevant Iraqi entry points, customs areas or other locations where the functions set out in paragraph 27 of this section can be performed. The number and location of the stationing points for the agents will be designated by the United Nations after consultations with the Government of Iraq.

27. The independent inspection agents will confirm delivery to Iraq of shipments. They will compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests, and the documents issued by eh 661 Committee, against goods actually arriving in Iraq. They will also have the authority to perform duties necessary for such confirmation, including: quantity inspection by weight or count, quality inspection including visual inspection, sampling, and, when necessary, laboratory testing.

28. The inspection agents will report all irregularities to the Secretary-General and to the 661 Committee. If the problem is related to normal commercial practice (e.g. some shortlanded goods), the 661 Committee and the Government of Iraq are informed, but normal commercial resolution practices (e.g. claims) go forth. If the matter is of serious concern, the independent inspection agents will hold the shipment in question pending guidance from the 661 Committee.

29. As regards the export to Iraq of parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, the requests will be submitted to the 661 Committee by the national Government of the supplier. Such requests will be considered for approval by the Committee in accordance with its procedures.

30. If the 661 Committee has approved a request in accordance with paragraph 29, the provisions of paragraph 24 shall apply. However, since the supplier can expect payment against future oil sales, as stated in paragraph 10 of the Resolution the proceeds of which are to be deposited in the Iraq Account will issue an irrevocable letter of credit stipulating that payment can only be effected when at the time of drawing the Iraq Account has sufficient disposable funds and the United Nations Secretariat approves the payment.

31. The requirement of authenticated confirmation of arrival provided for in this section shall apply also to the parts and equipment mentioned in paragraph 29.

Section VI

DISTRIBUTION OF HUMANITARIAN SUPPLIES PURCHASED UNDER THE DISTRIBUTION PLAN

32. The distribution of humanitarian supplies shall be undertaken by the Government of Iraq in accordance with the Distribution Plan referred to in section II of the present Memorandum. The Government of Iraq will keep the United Nations observation personnel informed about the implementation of the plan and the activities that the Government is undertaking.

33. The distribution of humanitarian supplies in the three northern governorates of Arbil, Dihouk and Suleimaniyeh shall be undertaken by the United Nations Inter-Agency Humanitarian Programme on behalf of the Government of Iraq under the Distribution Plan with due regard to the sovereignty and territorial integrity of Iraq in accordance with annex I.

Section VII

OBSERVATION OF THE EQUITABLE DISTRIBUTION OF HUMANITARIAN SUPPLIES AND DETERMINATION OF THEIR ADEQUACY

General provisions

34. The United Nations observation process will be conducted by United Nations personnel in Iraq under the overall authority of the Department of Humanitarian Affairs at United Nations Headquarters in New York in accordance with the provisions described below. Such observation shall apply to the distribution of humanitarian supplies financed in accordance with the procedures set out in the Resolution.

35. The objectives of the United Nations observation process shall be:

(*a*) To confirm whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured;

(*b*) To ensure the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq's humanitarian needs.

Observation procedures

36. In observing the equitable distribution and its adequacy, United Nations personnel will use, inter alia, the following procedures:

Food items

37. The observation of the equitability of food distribution will be based on information obtained from local markets throughout Iraq, the Iraqi Ministry of Trade, the information available to the United Nations and its specialized agencies on food imports, and on sample surveys conducted by United Nations personnel. The observation will also include the quantity and prices of food items imported under the Resolution.

38. To provide regular updated observation of the most pressing needs, a survey undertaken by United Nations agencies in cooperation with the appropriate Iraqi ministries will serve as a baseline for the continuing observation of the nutritional status of the population of Iraq. This information will take account of public health data generated by the Ministry of Health and the relevant United Nations agencies.

Medical supplies and equipment

39. Observation regarding distribution of medical supplies and equipment will focus on the existing distribution and storage system and will involve visits to hospitals, clinics as well as medical and pharmaceutical facilities where such supplies and equipment are stored. Such observation will also be guided by health statistics data from the Ministry of Health and surveys by relevant United Nations agencies.

Water/sanitation supplies and equipment

40. Observation of distribution of water/sanitation supplies and equipment will focus on the determination that they are used for their intended purposes. Confirmation will be carried out by collecting data on the incidence of water-borne diseases and by water quality control checks by visits to water and sanitation facilities by representatives of relevant United Nations agencies. In this regard the United Nations will rely on all relevant indicators.

Other materials and supplies

41. With reference to materials and supplies which do not fall within the three areas indicated above, in particular, those needed for the rehabilitation of infrastructures essential to meet humanitarian needs, observation will focus on confirmation that such materials and supplies are delivered to the predefined destinations in accordance with the Distribution Pan and that they are used for their intended purposes, and on the determination of whether these materials and supplies are adequate or necessary to meet the essential needs of the Iraqi population.

Coordination and cooperation

42. The United Nations observation activities will be coordinated by the Department of Humanitarian Affairs at United Nations Headquarters in New York. Observation will be undertaken by United Nations personnel. The exact number of such personnel will be determined by the United Nations taking into account the practical requirements. The Government of Iraq will be consulted in this regard.

43. The Iraqi authorities will provide to United Nations personnel the assistance required to facilitate the performance of their functions. United Nations personnel will coordinate with the Iraqi competent authorities.

44. In view of the importance of the functions which United Nations personnel will perform in accordance with the provisions of this section of the Memorandum, such personnel shall have, in connection with the performance of their functions, unrestricted freedom of movement, access to documentary material which they find relevant having discussed the matter with the Iraqi authorities concerned and the possibility to make such contacts as they find essential.

Section VIII

PRIVILEGES AND IMMUNITIES

45. In order to facilitate the successful implementation of the Resolution the following provisions concerning the privileges and immunities shall apply:

(*a*) Officials of the United Nations and of any of the specialized agencies performing functions in connection with the implementation of the Resolution shall enjoy the privileges and immunities applicable to them under articles V and VII of the Convention on the Privileges and Immunities of the United Nations, or Articles VI and VIII of the Convention of the Privileges and Immunities of the Specialized Agencies, to which Iraq is a party;

(*b*) Independent inspection agents, technical experts and other specialists appointed by the Secretary-General of the United Nations or by heads of the specialized agencies concerned and performing functions in connection with the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities accorded to experts on mission for the United Nations or for the specialized agency under article VI of the Convention on the Privileges and Immunities of the United Nations or the relevant annexes of the Convention on the Privileges and Immunities of the Specialized Agencies respectively;

(*c*) Persons performing contractual services for the United Nations in connection with the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities referred to in subparagraph (*b*) above concerning experts on mission appointed by the United Nations.

46. In addition, officials, experts and other personnel referred to in paragraph 45 above shall have the right of unimpeded entry into and exit from Iraq and shall be issued visas by the Iraqi authorities promptly free of charge.

47. It is further understood that the United Nations and its specialized agencies shall enjoy freedom of entry into and exit from Iraq without delay or hindrance of supplies, equipment and means of surface transport required for the implementation of the Resolution and that the Government of Iraq agrees to allow them to, temporarily, import such equipment free of customs or other duties.

48. Any issue relating to privileges and immunities, including safety and protection of the United Nations and its personnel, not covered by the provisions of this section shall be governed by paragraph 16 of the Resolution.

Section IX

CONSULTATIONS

49. The Secretariat of the United Nations and the Government of Iraq shall, if necessary, hold consultants on how to achieve the most effective implementation of the present Memorandum.

Section X

FINAL CLAUSES

50. The present Memorandum shall enter into force following signature, on the day when paragraphs 1 and 2 of the Resolution become operational and shall remain in force until the expiration of the 180 day period referred to in paragraph 3 of the Resolution.

51. Pending its entry into force, the Memorandum shall be given by the United Nations and the Government of Iraq provisional effect.

Signed this 20th day of May 1996 at New York in two originals in English.

For the United Nations:	For the Government of Iraq
(Signed) Hans CORRELL	*(Signed)* Abdul Amir AL-ANBARI
Under-Secretary-General	Ambassador Plenipotentiary
The Legal Counsel	Head of the delegation of Iraq

ANNEX I

1. In order to ensure the effective implementation of paragraph 8 (*b*) of the Resolution, the following arrangements shall apply in respect of the Iraqi governorates of Arbil, Dihouk and Suleimaniyeh. These arrangements shall be implemented with due regard to the sovereignty and territorial integrity of Iraq, and to the principle of equitable distribution of humanitarian supplies throughout the country.

2. The United Nations Inter-Agency Humanitarian Programme shall collect and analyse pertinent information on humanitarian needs in the three northern governorates. On the basis of that information, the Programme will determine the humanitarian requirements of the three northern governorates for discussion with the Government of Iraq and subsequent incorporation in the Distribution Plan. In preparing estimates of food needs, the Programme will take into consideration all relevant circumstances, both within the three northern governorates and in the rest of the country, in order to ensure equitable distribution. Specific rehabilitation needs in the three northern governorates shall receive the necessary attention.

3. Within a week following the approval of the Distribution Plan by the Secretary-General, the Programme and the Government of Iraq will hold discussions to enable the Programme to determine how the procurement of humanitarian supplies for the three northern governorates can be undertaken most efficiently. These discussions should be guided by the following considerations. The bulk purchase by the Government of Iraq of standard food commodities and medicine may be the most cost-effective means of procurement. Other materials and supplies for essential civilian needs, specifically required for the three northern governorates, may be more suitably procured through the United Nations system in view of technical aspects related to their proper use.

4. To the extent that purchases and deliveries are made by the Government of Iraq in response to the written communication of the Programme, an amount corresponding to the cost of the delivered goods will be deducted from the amount allocated to the Programme from the Iraq Account.

5. Humanitarian supplies destined for distribution in the three northern governorates shall be delivered by the Programme to warehouses located within these governorates. Such supplies can also be delivered by the Government of Iraq or the Programme, as appropriate, to warehouses in Kirkuk and Mosul. The warehouses shall be managed by the Programme. The Government of Iraq shall ensure the prompt customs and administrative clearances to enable the safe and quick transit of such supplies to the three northern governorates.

6. The Programme shall be responsible in the three northern governorates for the storage, handling, internal transportation, distribution and confirmation of the equitable distribution of humanitarian supplies. The Programme will keep the Government of Iraq informed on the implementation of distribution.

7. Whenever possible and cost-effective, the Programme shall use appropriate local distribution mechanisms which are comparable to those existing in the rest of Iraq in order to effectively reach the population. Recipients under this arrangement will pay a fee for internal transportation, handling, and distribution as in the rest of the country. The Programme shall ensure that the special needs of internally displaced persons, refugees, hospital in-patients and other vulnerable groups in need of supplementary food are appropriately met, and will keep the Government of Iraq informed.

8. The Programme will observe that humanitarian supplies are used for their intended purposes, through visits to sites and by collecting relevant data. The Programme will report to the Department of Humanitarian Affairs at United Nations Headquarters in New York and the Government of Iraq any violation observed by the Programme.

ANNEX II

1. The State concerned or, if the 661 Committee so decides, the national petroleum purchaser authorized by the 661 Committee, shall submit to the Committee for handling and approval the application, including the relevant contractual documents covering the sales of such petroleum and petroleum products, for the proposed purchase of Iraqi petroleum and petroleum products, endorsed by the Government of Iraq or the Iraqi State Oil Marketing Organization (hereinafter SOMO) on behalf of the Government. Such endorsement could be done by sending a copy of the contract to the 661 Committee. The application shall include details of the purchase price at fair market value, the export route, opening of a letter of credit payable to the Iraq Account, and other necessary information required by the Committee. The sales of petroleum and petroleum products shall be covered by contractual documents. A copy of these documents shall be included in the information provided to the 661 Committee together with the application for forwarding to the independent inspection agents described in paragraph 4 of this annex. The contractual documents should contain the following information: quantity and quality of petroleum and petroleum products, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the following points: marker crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing dates.

2. Irrevocable confirmed letters of credit will be opened by the oil purchaser's bank with the irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the Iraq Account. For this purpose, the following clauses will have to be inserted in each letter of credit:

"- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the "Iraq Account" with ...Bank."

"- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

3. All such letters of credit will have to be directed by the purchaser's bank to the bank holding the Iraq Account with the request that the latter adds its confirmation and forwards it to the Central Bank of Iraq for the purpose of advising SOMO.

4. The sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations independent oil experts appointed by the Secretary-General of the United Nations to assist the 661 Committee. The monitoring of oil exports will be carried out by independent inspection agents at the loading facilities at Ceyhan and Mina al-Bakr and, if the 661 Committee so decides, at eh pipeline metering station at the Iraq-Turkey border, and would include quality and quantity verification. They would authorize the loading, after they receive the information form the United Nations oil experts that the relevant contract has been approved, and report to the United Nations.

5. The United Nations will receive monthly reports form SOMO on the actual volume and type of petroleum products exported under the relevant sales contracts.

6. The United Nations Secretariat and SOMO shall maintain continuing contact and in particular United Nations oil experts shall meet routinely with SOMO representatives to review market conditions and oil sales.

(*j*) Exchange of letters between the United Nations and the Government the Netherlands constituting an agreement regarding the applicability of the Headquarters Agreement of the International Tribunal for the Former Yugoslavia to the activities and proceedings of the International Criminal Tribunal for Rwanda in the territory of the Kingdom of the Netherlands, New York, 22 and 24 April 1996[13]

I

LETTER FROM THE UNITED NATIONS

22 April 1996

As you know, by its resolution 955 (1994) of 8 November 1994, the Security Council of the United Nations, acting under Chapter VII of the Charter of the United Nations, established 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 neighboring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Criminal Tribunal for Rwanda"). By the same resolution the Council adopted the Statute of the International Criminal Tribunal for Rwanda (hereinafter referred to as "the Statute").

Although the International Criminal Tribunal for Rwanda is a separate entity from the International Tribunal for the Former Yugoslavia, there are nevertheless certain institutional links between the two Tribunals which have been formalized in the Statute. I refer, in particular, to the common Appeals Chamber and the common Prosecutor.

While the Security Council has designated Arusha as the seat of the International Criminal Tribunal for Rwanda and decided that an Office of the Prosecutor should be in Kigali, given the institutional links between the two Tribunals, it is evident that certain activities and proceedings of the International Criminal Tribunal for Rwanda may be undertaken at The Hague from time to time.

In order to facilitate such activities and proceedings of the International Criminal Tribunal for Rwanda as may take place at the Hague, I have the honour to propose that the pertinent provisions of the Agreement between the United Nations and the Kingdom of the Netherlands concerning the headquarters of the International Tribunal for the Former Yugoslavia, concluded on 29 July 1994,[14] be applicable, mutates mutandis, to the activities and proceedings of the International Criminal Tribunal for Rwanda in the territory of the Kingdom of the Netherlands, in particular:

— The judges of the Appeals Chamber and the Prosecutor residing in The Hague will enjoy the privileges and immunities as mentioned in article XIV of the Agreement;

— Staff of the liaison office in The Hague will enjoy the privileges and immunities mentioned in article XV of the Agreement;

— Staff and persons performing missions for the Rwanda Tribunal not forming part of the liaison office in The Hague shall enjoy the privileges and immunities mentioned in article XVII of the Agreement.

I further propose that upon receipt of your confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Kingdom of the Netherlands regarding the applicability of the above-referenced Headquarters Agreement to the activities and proceedings of the International Criminal Tribunal for Rwanda in the territory of the Kingdom of the Netherlands, which will enter into force on the first day of the second month following the date of receipt of your confirmation.

(Signed) Hans CORELL
Under-Secretary-General for Legal Affairs
The Legal Counsel

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF THE NETHERLANDS TO THE UNITED NATIONS

24 April 1996

I have the honour to acknowledge receipt of Your Excellency's letter of 22 April 1996, which reads as follows:

[*See letter I*]

On behalf of the Government of the Kingdom of the Netherlands, I have further the honour to inform Your Excellency that the foregoing proposals are acceptable and to confirm that this exchange of letters shall constitute an Agreement between the Kingdom of the Netherlands and the United Nations regarding the applicability of the Agreement to the activities and proceedings of the International Tribunal for Rwanda in the territory of the Kingdom of the Netherlands, which will enter into force on the first day of the second month following the date of receipt of this information.

(Signed) N. H. BIEGMAN
Ambassador
Permanent Representative

(*k*) Agreement between the United Nations and the Government of the Germany concerning the headquarters of the United Nations Volunteers Programme.[15] Done at New York on November 1995

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

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

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

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

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

Have agreed as follows:

Article 1

DEFINITIONS

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

(*a*) "the Parties" means the United Nations and the Federal Republic of Germany;

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

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

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

(*e*) "the Executive Coordinator" means the Executive Coordinator of the United Nations Volunteers Programme;

(*f*) "the host country" means the Federal Republic of Germany;

(*g*) "the Government" means the Government of the Federal Republic of Germany;

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

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

(*j*) "the representatives of Members" means the representatives of States Members of the United Nations and other States participating in the United Nations Development Programme;

(*k*) "officials of the Programme" means the Executive Coordinator and all members of the staff of the United Nations Volunteers Programme, irrespective of nationality, with the exception of those who are locally recruited and assigned to hourly rates as provided for in United Nations General Assembly resolution 76(1) of 7 December 1946;

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

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

(*n*) "offices of the United Nations" means and includes subsidiary bodies and organizational units of the United Nations;

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

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

Article 2

PURPOSE AND SCOPE OF THE AGREEMENT

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

Article 3

JURIDICAL PERSONALITY AND LEGAL CAPACITY

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

(*a*) To contract;

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

(*c*) To institute legal proceedings.

2. For the purpose of the article, the UNV shall be represented by the Executive Coordinator.

Article 4

Application of the General and Vienna Conventions and of the Agreement

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

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

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

Article 5

Inviolability of the Headquarters district

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

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

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

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

5. The UNV may expel or exclude persons from the Headquarters district for violation of its regulation.

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

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

Article 6

Law and authority in the Headquarters district

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

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

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

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

Article 7

Inviolability of archives and all documents of the United Nations Volunteers

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

Article 8

Protection of the Headquarters district and its vicinity

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

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

Article 9

FUNDS, ASSETS AND OTHER PROPERTY

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

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

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

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

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

Article 10

EXEMPTION FROM TAXES, DUTIES, IMPORT AND EXPORT RESTRICTIONS

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

(*a*) Income tax (*Einkommensteuer*);
(*b*) Corporation tax (*Korperschaftsteuer*);
(*c*) Trade tax (*Gwerbesteur*);
(*d*) Property tax (*Vermogensteuer*);
(*e*) Land tax (*Grundsteuer*);
(*f*) Land transfer tax (*Grunderwerbsteuer*);
(*g*) Motor vehicle tax (*Kraftfahrzeugsteuer*);
(*h*) Insurance tax (*Versicherungsteuer*);

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

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

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

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

Article 11

PUBLIC AND OTHER SERVICES FOR THE HEADQUARTERS DISTRICT

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

Article 12

COMMUNICATIONS FACILITIES

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

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

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

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

Article 13

PRIVILEGES AND IMMUNITIES OF THE REPRESENTATIVES OF MEMBERS

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

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

Article 14

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

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

(*a*) Enjoy exemption 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 UNV;

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

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

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

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

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

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

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

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

Article 15

United Nations Volunteers

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

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

Article 16

Experts on missions

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

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

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

Article 17

Personal recruited locally and assigned to hourly rates

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

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

Article 18

UNITED NATIONS LAISSEZ-PASSER AND CERTIFICATE

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

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

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

Article 19

COOPERATION WITH THE COMPETENT AUTHORITIES

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

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

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

Article 20

NOTIFICATION

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

Article 21

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

All persons referred to in this Agreement as notified, and persons invited on official business, by the Executive Coordinator shall have the right of unimpeded entry into, exit from, free movement and sojourn within the host country. They shall be granted facilities for speedy travel. Visas, entry permits or licences, where required, shall be granted free of charge and as promptly as pos-

sible. The same facilities shall be extended to UNV candidates, if such is requested by the Executive Coordinator. No activity performed by persons referred to above in their official capacity with respect to the UNV shall constitute a reason for preventing their entry into or departure from the territory of the host country or for requiring them to leave such territory.

Article 22

IDENTIFICATION CARDS

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

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

Article 23

FLAG, EMBLEM AND MARKINGS

The United Nations be entitled to display its flag, emblem and markings on the Headquarters district and an vehicles used for official purposes.

Article 24

SOCIAL SECURITY

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

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

Article 25

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

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

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

Article 26

SETTLEMENT OF DISPUTES

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

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

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

2. Any dispute between the Parties concerning the interpretation or application of this Agreement or the regulations of the UNV, which cannot be settled amicably, shall be submitted, at the request of their 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 rparty 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. Following 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 expenses of the arbitration shall be borne by the parties as assessed by the arbitrators. 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 to the dispute.

Article 27

FINAL PROVISIONS

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

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

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

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

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

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

For the United Nations: *(Signed)* James Gustave SPETH

For the Federal Republic of Germany: *(Signed)* Tono EITEL

I

LETTER FROM THE PERMANENT REPRESENTATIVE OF GERMANY TO THE UNITED NATIONS

10 November 1995

I have the honour to refer, on the occasion of the signing of the Agreement between the Federal Republic of Germany and the United Nations concerning the headquarters of the United Nations Volunteers Programme (hereinafter referred to as "the Agreement"), to the discussions held between the representatives of the Government of the Federal Republic of Germany and the representatives of the United Nations concerning the interpretation of certain provisions of the Agreement and to confirm the following understandings:

1. *Regulations of the United Nations under paragraph 3 of article 6 of the Agreement*

It is the understanding of the Parties that the regulations to be issued by the United Nations under paragraph 3 of article 6 will be those necessary for the conduct of its operations and activities in the execution of its mandate and to establish conditions necessary for the exercise of its functions and fulfillment of its purpose.

2. *Turnover and mineral oil tax*

(*a*) It is the understanding of the Parties that the Federal Finance Office of the Federal Republic of Germany, in pursuance of paragraph 2 of article 10 of the Agreement, shall, on request, reimburse to the UNV the amount of value added-tax/turnover tax (*Umsatzsteur*) paid in respect of supplies and services purchased form a taxable person for official use of the UNV, provided that the tax due exceeds 50 deutsche mark per invoice in the aggregate and the tax has been separately identified in the invoice. If the reimbursed value, added tax/ turnover tax (*Umsatzsteuer*) is subsequently reduced as a result of a review of the originally paid price for the supplies and services in question, the UNV shall inform the Federal Finance Office of such a reduction in price and shall subsequently return the balance of the previously reimbursed tax.

(*b*) Likewise, the Federal Finance Office, in pursuance of paragraph 2 of article 10 of the Agreement, shall, on request, also reimburse to the UNV the mineral oil tax for petrol, diesel and heating oil included in the price of purchases intended for official use of the UNV provided that the tax exceeds 50 deutsche mark per invoice in the aggregate.

3. *Goods and services transactions*

(*a*) It is the understanding of the Parties that if goods purchased in the European Union or imported from outside of the European Union by the UNV for its official use, for which the UNV was granted exemption from value, added tax/turnover tax (*Umsatzsteuer*) or import turnover tax (*Einfuhrumsatzsteuer*) in accordance with section 7(*b*) or section 8 if article II of the General Convention or paragraphs 2 and 3 of article 10 of the Agreement, are sold, given away or otherwise disposed of to taxable persons, who have the full right of deduction, international organizations entitled to tax exemption, or to other entitled to tax, exempt status benefiting entities, no value, added tax/turnover tax (*Umsatzsteuer*) shall be paid. If goods referred to above are sold, given away or otherwise disposed of to persons and entities other than those referred to above, the part of the value added tax/turnover tax (*Umsatzsteuer*) which corresponds to the sales price or the current market value of such goods, as appropriate, shall be payable to the Federal Finance Office, as provided in paragraph 4 of Article 10 of the Agreement. It is further the understanding of the Parties that the amount of the tax due shall be determined on the basis of the tax rate applicable on the actual date of the transaction in question.

(*b*) The goods imported exempt from customs duties under the terms of section 7(*b*) of article II of the General Convention or paragraph 3 of article 10 of the Agreement shall not be sold in the Federal Republic of Germany except with the consent of the Government and subject to the payment of the applicable customs duties.

4. *Motor vehicles*

It is the understanding of the Parties that the expression "furniture and effects" referred to in paragraph 1(*g*) of article 14 of the Agreement shall include motor vehicles in the possession and use of officials at least six months before their first taking up their post in Germany. This shall also apply to leased

vehicles if the officials prove by means of a leasing agreement that said agreement was made at least six months before their first taking up their post in Germany. Furniture and effects may be brought into Germany over a period of 12 months from the date on which the officials first take up their post. This may also be done in stages within that period. The six-month requirement referred to above shall exceptionally be waived until six months after the formal relocation of UNV headquarters to Bonn, Germany.

5. *Officials at the P-4 level*

It is the understanding of the Parties that in well-founded individual cases, the Federal Republic of Germany shall, on request, grant to officials at the P-4 level whose functions justify it the same privileges, immunities and facilities as accorded to officials of P-5 level and above in accordance with paragraph 2 of at the Article 14 of the Agreement. Requests on the matter shall be submitted by the Executive Coordinator to the Federal Foreign Office.

6. *United Nations Volunteers at Headquarters*

It is the understanding of the Parties that United Nations Volunteers may only be invited to UNV headquarters in Germany for limited periods of time, normally not exceeding eight weeks, for the purposes of briefing, debriefing, training, or for annual leave purposes, and would not be used to perform ordinary staff functions at headquarters.

7. *Laissez-passer for United Nations Volunteers*

It is the understanding of the Parties that United Nations Volunteers will be issued with United Nations laissez-passer.

8. *General consultations*

It is the understanding of the Parties that if the Government enters into any agreement with the intergovernmental organization containing terms and conditions more favorable than those extended to the United Nations under the present Agreement, either Party may ask for consultations as to whether such terms and conditions could be extended to the United Nations.

9. *UNV retirees*

Following retirement from active service with the UNV, after a number of years of United Nations service in Bonn and Geneva, officials of the UNV and members of their families forming part of their households (spouses, unmarried children under age 21 and other relatives dependent on them) shall upon application, be issued with a residence permit, insofar as they are in a position to support themselves, including payment of health and care insurance contributions, in accordance with applicable German legislation.

If the United Nations agrees to the understanding contained in paragraphs 1 to 9 above, this note and your affirmative reply in writing shall constitute an Agreement between the Federal Republic of Germany and the United Nations

regarding the above-referenced understandings which shall enter into force in accordance with article 27 of the Headquarters Agreement.

(Signed) Tono EITEL
Permanent Representative of Germany
to the United Nations

II

LETTER FROM THE UNITED NATIONS TO THE PERMANENT REPRESENTATIVE OF GERMANY TO THE UNITED NATIONS

10 November 1995

I have the honour to acknowledge receipt of your note of 10 November 1995, in which you confirm the understandings concerning the interpretation of certain provisions of the Agreement between the United Nations and the Federal Republic of Germany concerning the headquarters of the United Nations Volunteers Programme signed on 10 November 1995, which reads as follows:

[*See Letter I*]

In accordance with your request, I wish to confirm, on behalf of the United Nations, that the understandings set out in your note fully correspond to the views of the United Nations on the subject, and that this exchange of notes shall constitute an Agreement between the United Nations and the Federal Republic of Germany regarding the above-referenced understandings which shall enter into force in accordance with article 27 of the Headquarters Agreement.

(Signed) James Gustave SPETH
Administrator
United Nations Development Programme

(*Translation*)

Text of the unilateral German statement re article 8 of the Headquarters Agreement to be made on the occasion of the exchange of the communications regarding the fulfillment of the formal requirements for the entry into force of the Agreement

In connection with today's communication that the formal requirements for the entry into force of the Agreement of 10 November 1995 between the Federal Republic of Germany and the United Nations concerning the headquarters of the United Nations Volunteers Programme have been fulfilled on the part of the Federal Republic of Germany, I have the honour to make the following statement on behalf of the Federal Republic of Germany:

"With regard to the obligations undertaken by the Federal Republic of Germany under international law and under this Agreement, I would like to draw your attention to the following:

According to article 8 of the Basic Law of the Federal Republic of Germany, all Germans have the right to assemble peacefully and unarmed without prior notification or permission. Under the Act on Public Assemblies and Processions (Assembly Act), everyone has the right to hold public assemblies and processions and to participate therein. The participants have in principle the right to choose the venue of the assembly in public areas. An assembly may therefore only be prohibited or dissolved if it directly endangers public safety or order.

It is thus clear that the right to assemble cannot be exercised on the United Nations premises, which is not a public area."

(*l*) Exchange of letters between the United Nations and the Government of Rwanda constituting an agreement on the establishment of a United Nations Office in Rwanda New York, 10 June 1996, and Kigali, 27 June 1996[16]

I

Letter from the United Nations

I have the honour to refer to paragraph 4 of Security Council resolution 1050 (1996) of 8 March 1996 by which the Security Council encouraged the Secretary-General, in agreement with the Government of Rwanda, to maintain in Rwanda a United Nations office to be headed by his Special Representative and include the present United Nations communications system, for the purpose of supporting the efforts of the Government of Rwanda to promote national reconciliation, strengthen the judicial system, facilitate the return of refugees and rehabilitation the country's infrastructure.

In order to facilitate the fulfillment of the purpose of the United Nations Office in Rwanda (hereinafter UNOR), I propose that your Government, in implementation of its obligations under Article 105 of the Charter of the United Nations, extend to UNOR, as an organ of the United Nations, its property, funds and assets and its members the privileges and immunities provided in the Convention on the Privileges and Immunities of the United Nations, to which Rwanda is a Party (the Convention).

In view of the special importance of the functions of UNOR, I propose in particular that your Government extend to:

The Special Representative and other high ranking members of UNOR, whose names shall be communicated to the Government, the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law;

— The officials of the United Nations Secretariat assigned to serve with UNOR, the privileges and immunities to which they are entitled under articles V and VII of the Convention;

— Other persons assigned to serve with UNOR, 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 fulfillment of the functions of UNOR also include:

(i) All necessary facilities for the entry and exit, at all times, of UNOR personnel, property, the United Nations communication system, supplies, equipment and spare parts and means of transport, including the expeditious issuance, free of charge, of visas, authorizations, licences or permits, as required;

(ii) Freedom of movement throughout the country of personnel, equipment and means of transport. Such freedom of movement shall be coordinated with the Government in respect of areas deemed by the Government to be subject to national security;

(iii) Exemption from all direct taxes, charges, duties and restrictions in accordance with the provisions of article II, sections 7 and 8, of the Convention. However, UNOR will not claim exemption from taxes which are in fact, no more than charges for public utility services;

(iv) The right to fly the United Nations flag on premises and the vehicle of the Special Representative;

(v) The right to be accorded the same rights, privileges and exemptions as are enjoyed by diplomatic missions with respect to the registration and operation of motor vehicles, as well as other means of transportation;

(vi) The right to unrestricted communication by radio, satellite or other forms of communication with United Nations Headquarters and between the various offices and to connect with the United Nations radio and satellite network as well as by telephone, telegraph or other means; the United Nations telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations and the relevant frequencies on which any such stations may be operated shall be decided upon in cooperation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board;

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

It is expected that the Government of Rwanda shall provide UNOR, where necessary and upon request of the Special Representative, with maps and other information which may be useful in facilitating its tasks and movements.

Furthermore, it is also expected that your Government shall provide UNOR and its personnel with the necessary protection in order to ensure its safety and security.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an agreement between the United Nations and Rwanda on the status of UNOR and its members with immediate effect and shall remain in force until the termination of the mandate of UNOR is decided upon.

(Signed) Boutros BOUTROS-GHALI
Secretary-General

II

LETTER FROM THE GOVERNMENT OF RWANDA

27 June 1996

I have the pleasure to refer to your letter of 10 June 1996 in which you express your agreement with the provisions for establishing a United Nations Office in Rwanda in accordance with paragraph 4 Security Council resolution 1050 (1969) of 8 March 1996.

The government of Rwanda is in agreement with these provisions and welcomes the establishing of the United Nations Office in Rwanda. As agreed in our meetings with the United Nations Under-Secretary General for Political Affairs, we look forward to being consulted on the proposed candidate for the Special Representative to head that office.

(Signed) Paul KAGAME
Major General, Vice-President and Minister for Defence

(*m*) Exchange of letters between the United Nations and the Federal Republic of Yugoslavia constituting an agreement on the status of the Liaison Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and its personnel in Belgrade. New York 8 and 12 August 1996[17]

I

LETTERS FROM THE UNITED NATIONS

8 August 1996

I have the honour to refer to Security Council resolution 827 (1993) of 25 May 1993, by which the Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 (hereinafter referred to as the "International Tribunal").

I further have the honour to refer to Security Council resolution 1034 (1995) of 21 December 1995, by which the Council called upon all States in the region of the former Yugoslavia to create the conditions essential for the International Tribunal to perform the task for which it was created, including the establishment of offices of the Tribunal when the latter deems it necessary.

I finally have the honour to refer to the letter dated 23 February 1996 from the Federal Minister of Foreign Affairs of the Federal Republic of Yugoslavia to the President of the International Tribunal, reiterating his Government's readiness to enable the Prosecutor of the International Tribunal to open an office in Belgrade (hereinafter referred to as the "Liaison Office"), to assist in finding appropriate premises and, in general, to cooperate with the Liaison Office and help it in its work.

Accordingly, and in order to facilitate the performance of its tasks, I propose that your Government, in implementation of its obligation under Article 105 of the Charter of the United Nations, extend to the Liaison Office, as an organ of the United Nations, its property, funds, assets and personnel, the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the Convention") to which the Federal Republic of Yugoslavia is a party.

In view of the importance of the functions which the Liaison Office will perform in the Federal Republic of Yugoslavia, I propose that your Government extend to:

— The Liaison Officer, the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law;

— The officials of the Office of the Prosecutor assigned to serve with the Liaison Office, the privileges and immunities provided under articles V and VII of the Convention;

— Other persons assigned to serve with the Liaison Office the privileges and immunities accorded to experts on missions for the United Nations under article VI of the Convention.

— The International Tribunal shall communicate to the Federal Ministry of Foreign Affairs of the Federal Ministry of Foreign Affairs of the Federal Republic of Yugoslavia the names of the personnel of the Liaison Office.

In performing their functions, the Liaison Office and its personnel shall enjoy the following rights and facilities:

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

(ii) The unimpeded freedom of movement throughout the country of personnel, property, equipment and means of transport;

(iii) Access to all documentary material of a public nature relevant for the effective operation of the Liaison Office;

(iv) The right to have contacts with central and local authorities, government agencies including the armed forces, through the Federal Ministry of Justice, as well as with non-governmental organizations, private institutions and individuals;

(v) The right to interview victims and witnesses, to collect evidence and any useful information, including in locations outside the Liaison Office. The Liaison Office shall use its best endeavours to interview persons who wish to provide information;

(vi) The right to have access to persons serving their prison sentences and to persons in detention, in coordination with the prison authorities through the Federal Ministry of Justice;

(vii) The right to make arrangements through its own facilities for the transfer of all databases and all information collected;

(viii) The exemption from all direct taxes, import and export duties, registration fees and charges, in accordance with the Convention;

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

(x) The right to unimpeded communication by radio, satellite or other forms of communication with United Nations Headquarters and between various offices, and to connect with the United Nations radio and satellite network on the registered waves of the United Nations and others assigned by the Government of the Federal Republic of Yugoslavia as well as to communicate by telephone, telegraph or by other means;

(xi) The right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the Liaison Office. The Government of the Federal Republic of Yugoslavia shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of the Liaison Office and its members.

Furthermore, in accordance with the provisions of article II of the Convention, the property, funds and assets of the Liaison Office, 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. The archives of the Liaison Office, and in general, all documents belonging to, used or held by it, wherever located in the Federal Republic of Yugoslavia and by whomsoever held, shall be inviolable.

It is understood that the Government of the Federal Republic of Yugoslavia shall assist the Liaison Office in finding such premises as may be required for conducting the official and administrative activities of the Liaison Office throughout the territory of the Federal Republic of Yugoslavia. All premises used by the Liaison Office and its members shall be inviolable and subject to the exclusive control and authority of the Liaison Officer.

It is further understood that, upon the request of the Liaison Officer, the Government of the Federal Republic of Yugoslavia shall take all the effective and adequate measures to ensure the appropriate security, safety and protection of the Liaison Office, its members, premises and property.

Any dispute or controversy arising out of, or relating to this agreement, if not settled by consultation, negotiation or other mutually agreed mode of settlement, shall be referred to arbitration in the form and manner agreed upon between the parties.

This Agreement may be amended by written agreement of both parties. Each party shall give full consideration to any proposal for an amendment made by the other party.

This agreement shall apply provisionally upon signature by the United Nations and the Federal Republic of Yugoslavia, and shall enter into force upon verification of the competent authorities of the Federal Republic of Yugoslavia in accordance with its laws.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an agreement between the United Nations and the Federal Republic of Yugoslavia on the status of the Liaison Office of the Prosecutor of the International Tribunal and its personnel.

(Signed) Boutros BOUTROS-GHALI
Secretary-General

B

8 August 1996

On the occasion of the conclusion of the Exchange of Letters between the United Nations and the Federal Republic of Yugoslavia on the status of the Liaison Office of the Prosecutor of the International Tribunal and its personnel (hereinafter: the Agreement), I would like to refer to the discussions held between the representatives of the Federal Republic of Yugoslavia and the representatives of the United Nations concerning the interpretation and implementation of certain provisions of the Agreement.

I have the honour to confirm on behalf of the United Nations the following understandings:

It is the understanding of the parties that the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations of 13 February 1946, shall be applicable to the Liaison Office.

It is the understanding of the parties that without prejudice to the privileges, immunities, rights and facilities specified in this Agreement, all members of the Liaison Office shall respect the laws and regulations of the Federal Republic of Yugoslavia.

It is the understanding of the parties that in exercising the freedom of entry into, exit from and movement throughout the country under paragraphs (i) and (ii) of the Agreement, the appropriate visa requirements and national traffic regulations shall be respected and observed. It is furthermore the understanding of the parties that laws and regulations concerning zones, entry to which is prohibited or regulated for reasons of national security, shall be respected provided they are of general application and are not intended to create impediments to the efficient functioning of the Liaison Office.

It is finally the understanding of the parties that, without prejudice to the authority of the International Tribunal, in exercising the right to interview victims and witnesses under paragraph (v) of the Agreement, the Liaison Officer may not enforce, or in any way compel the appearance of such witnesses or the provision of evidence.

I would be grateful if you could confirm that the above is also the understanding of the Federal Republic of Yugoslavia.

(Signed) Ralph ZACKLIN
Director and Deputy to the Under-Secretary-General
Office of Legal Affairs

II

LETTERS FROM THE PERMANENT MISSION OF THE FEDERAL REPUBLIC OF YUGOSLAVIA TO THE UNITED NATIONS

A

12 August 1996

I have the honour to acknowledge receipt of your letter of 8 August 1996 concerning the status of the Liaison Office of the Prosecutor of the International Tribunal established for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991, which reads as follows:

[*See Letter I, A*]

I further have the honour to inform you that the Federal Republic of Yugoslavia is fully agreed with the provisions contained in your letter and, considering the mutual understanding of the said provisions contained in the letter of Mr. Ralph Zacklin, Director of the Legal Office of the United Nations and Deputy to the Under-Secretary-General, of 8 August 1996, confirms that your letter and the reply thereto constitute an agreement between the Federal Republic of Yugoslavia and the United Nations on the status of the Liaison Office of the Prosecutor of the International Tribunal and its personnel in Belgrade.

(Signed) Vladislav JOVANOVIC
Charge d'affaires a.i.

I have the honour to acknowledge the receipt of your letter of 8 August 1996 in which you confirm the understanding of the United Nations regarding the interpretation and implementation of certain provisions of the Agreement between the United Nations and the Government of the Federal Republic of Yugoslavia on the status of the Liaison Office of the Prosecutor of the International Tribunal and its personnel in Belgrade, which reads as follows:

[*See Letter I, B*]

I further have the honour to confirm that the understanding of the United Nations contained in your letter is also the understanding of the Federal Republic of Yugoslavia.

(Signed) Vladislav JOVANOVIC
Charge d'affaries a.i.

(*n*) Exchange of letters between the United Nations and the Government of Bosnia and Herzegovina constituting an agreement on the status of the United Nations Mission in Bosnia and Herzegovina. Sarajevo, 23 July and 5 September 199618

I

LETTERS FROM THE UNITED NATIONS

23 July 1996

I have the honour to refer to the enclosed proposal for an exchange of letters between your Government and the United Nations on the status of the United Nations Mission in Bosnia and Herzegovina (UNMIBH).

United Nations Headquarters in New York has requested that I submit the attached letter, which I have signed on behalf of the Secretary-General, to your Government for purposes of formalizing an agreement on the status of UNMIBH in Bosnia and Herzegovina.

(Signed) S. Iqbal RIZA
Special Representative of the Secretary-General,
on behalf of Boutros Boutros-Ghali, Secretary-General

23 July 1996

I have the honour to refer to Security Council resolution 1035 (1995) of 21 December 1995, by which the Council decided to establish a United Nations civilian police to be known as the International Police Task Force (IPTF) and a United Nations civilian office. In accordance with paragraph 2 of the above-mentioned resolution, IPTF will be entrusted with the tasks set out in annex II of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Peace Agreement). The United Nations civilian office will be entrusted with the responsibilities set out in the report of the Secretary-General dated 13 December 1995 (S/1995/1031), which was approved by the Security Council in paragraph 1 of the above-mentioned resolution.

IPTF and the United Nations civilian office, which includes the Mine Action Centre, and, as agreed upon by the Security Council on 7 March 1996 (S/1996/174), a small team of military liaison officers, will be referred to as the United Nations Mission in Bosnia and Herzegovina (UNMIBH). IPTF and the United Nations civilian office will function under the authority of the Special Representative of the Secretary-General who also is the United Nations Coordinator and Head of Mission of UNMIBH.

In order to facilitate the fulfillment of the purposes of UNMIBH, I propose that your Government, in implementation of its obligations under Article 105 of the Charter of the United Nations, extend to UNMIBH, as an organ of the United Nations, its property, funds and assets and its members listed in paragraphs (*a*), (*b*), and (*c*) below, the privileges and immunities provided in the Convention on the Privileges and Immunities of the United Nations (the Convention), to which Bosnia and Herzegovina is a party. Additional facilities as provided herein are also required for the contractors and their employees engaged by the United Nations to perform services and/or supply equipment, provisions, supplies, materials and other goods in support of UNMIBH (United Nations contractors).

In view of the special importance of the functions which UNMIBH will perform in Bosnia and Herzegovina, I propose in particular that your Government extend to:

(*a*) the Special Representative of the Secretary General, the Commissioner of IPTF and other high-ranking members of UNMIBH, whose names shall be communicated to the Government, the privileges and immunities, exemptions and facilities which are enjoyed by diplomatic envoys in accordance with international law;

(*b*) The officials of the United Nations Secretariat assigned to serve with UNMIBH, the privileges and immunities to which they are entitled under articles V and VII of the Convention. Locally recruited members of UNMIBH 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;

(*c*) Person, including IPTF personnel and military liaison officers, assigned to serve with UNMIBH, the privileges and immunities accorded to experts performing missions for the United Nations under article VI of the Convention;

(*d*) United Nations contractors, other than nationals of Bosnia and Herzegovina, engaged exclusively to support the activities of UNMIBH shall be accorded repatriation facilities in time of international crisis and exemption form taxes in Bosnia and Herzegovina on the services provided to UNMIBH, including corporate, income, social security and other similar taxes arising directly from the provision of such services.

UNIMIBH and its members shall respect all local laws and regulations. The Special Representative of the Secretary General shall take all appropriate measures to ensure the observance of those obligations. The Government shall respect the exclusively international nature of UNMIBH.

The privileges and immunities necessary for the fulfillment of the functions of UNMIBH also include:

(i) Unrestricted freedom of entry and exit, without delay or hindrance, of its members and United Nations contractors, their property, supplies, equipment and spare parts and means of transport;

(ii) Unrestricted freedom of movement throughout the country of its members and United Nations contractors, their property, equipment and means of transport, UNMIBH, its members, United Nations contractors and their vehicles, vessels and aircraft shall use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls, landing fees, parking fees, overflight fees, port fees and charges, including wharfage charges. However, exemption from charges which are in fact charges for services rendered will not be claimed;

(iii) Prompt issuance by the Government of all necessary authorizations, permits and licences required for the importation of equipment, provisions, supplies, materials and other goods used in support of UNMIBH, including in respect of importation by United Nations contractors, free of any restrictions and without the payment of duties, charges and taxes, including value-added tax.

(iv) Acceptance by the Government of permits and licences issued by the United Nations for the operation of vehicles used in support of UNMIBH; acceptance by the Government, or where necessary validation by the Government, free of charge and without any restriction, of licences and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels used in support of UNMIBH; prompt issuance by the Government, free of charge and without any restrictions, of necessary authorizations, licences and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels used in support of UNMIBH;

(v) The right for IPTF to have access to any site, person, activity, proceeding, record or other item or event in Bosnia and Herzegovina to carry out its responsibilities under the Agreement on the International Police Task Force annexed to the Peace Agreement; such right shall include, pursuant to the above-mentioned Agreement on the International Police Task Force, the right to monitor, observe and inspect any site or facility at which IPTF believes that police, law enforcement, detention or judicial activities are taking place;

(vi) The right to fly the United Nations flag on UNMIBH premises, including its headquarters, regional headquarters, vehicles, aircraft and vessels used in support of UNMIBH;

(vii) The right to unrestricted communication by radio, satellite or other forms of communication with United Nations Headquarters and between the various offices and to connect with the United Nations radio and satellite network, as well as by telephone, telegraph or other means. The frequencies on which the communication by radio will operate shall be decided upon in cooperation with the Government;

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

It is understood that the Government of Bosnia and Herzegovina shall provide at no cost to the United Nations, in agreement with the Special Representative of the Secretary General, all such premises as may be required for conducting the operational and administrative activities of UNMIBH. All premises used by UNMIBH and its members shall be inviolable and subject to the exclusive control and authority of the United Nations.

It is expected that the Government of Bosnia and Herzegovina shall provide UNMIBH, where necessary and upon request of UNMIBH, with maps and other information, including locations of minefields and other dangers and impediments, which may be useful in facilitating its tasks and movements.

Finally, it would be appreciated if the Government of Bosnia and Herzegovina would agree to extend to the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), established pursuant to Security Council resolutin 1037 (1996) of 15 January 1996, the United Nations Liaison Office in Belgrade and the United Nations Office in Zagreb, the necessary privileges and immunities, rights and facilities for the purposes of transiting through the territory of Bosnia and Herzegovina.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an agreement between the United Nations and Bosnia and Herzegovina on the status of UNMIBH and its members with immediate effect.

(Signed) S. Iqbal RIZA
Special Representative of the Secretary-General
on bchalf of Boutros Boutros-Ghali, Secretary-General

II

LETTER FROM THE GOVERNMENT OF BOSNIA AND HERZEGOVINA

I have the honour to acknowledge receipt of your letter dated 23 July 1996 concerning the Agreement between Bosnia and Herzegovina and the United Nations on the status on UNMIBH and its members which reads as follows:

[*See Letter I*]

I have the honour to inform you that the foregoing text is in accordance with the position of my Government and that your letter and this letter in reply to it constitute the Agreement between Bosnia and Herzegovina and the United Nations on the status of UNMIBH and its members, with effect from the date of this letter.

Done in Sarajevo, 5 September 1996

(Signed) Jadranko PRLIC
Minister For Foreign Affairs

(*o*) Exchange of letters between the United Nations and the Government of South Africa constituting an agreement concerning arrangements for the Second United Nations Regional Conference on Space Technology for Sustainable Development in Africa, to be held at Pretoria from 4 to 8 November 1996. Vienna, 8 July and 25 October 1996[19]

I

LETTER FROM THE UNITED NATIONS

8 July 1996

As you are aware, the United Nations and the Government of South Africa (the Government) have had discussions on the above-mentioned subject through the Permanent Mission of South Africa to the United Nations. The objective of the Conference is to examine current and imminent space technologies that are particularly important to the development of African countries. In this regard, the Conference shall consider critical success factors and approaches for local adoption and introduction of space activities in those activities where it could enhance productivity. The Conference shall also discuss what immediate steps could be taken at the national, regional and international levels to enhance the stimulation and nurturing of space technology, related knowledge that is critical and relevant to African development.

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

A. *The United Nations*

1. The United Nations shall provide roundtrip international air travel (economy class) to South Africa for up to 30 African scientists, among nominees from developing counties in the African region.

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

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

4. The United Nations shall disseminate the necessary information and extend invitations to the participants from countries of the ECA region.

5. The United Nations shall make arrangements, as may be necessary, to provide for the Conference, the services of key speakers and contributors from industrialized and developing countries.

B. *Language and participation*

1. The total number of participants will be limited to 200.

2. The official languages of the Conference will be English and French.

C. *The Government of South Africa*

1. The Government will act as host to the Conference, which will be held at Pretoria from 4 to 8 November 1996.

2. The Government will also designate an official representing the Department of Trade and Industry, the Department of Foreign Affairs and the Department of Arts, Culture, Science and Technology to act as liaison officer between the United Nations and the Government for making the necessary arrangements concerning the contributions described in the following paragraph.

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

(*a*) Hotel accommodation and board for up to 30 African scientists who will be attending the Conference;

(*b*) All local transportation, including from and to airport upon arrival and departure for all participants during the Conference and for all personnel of the Organizing Committee responsible for the Conference;

(*c*) Appropriate premises and equipment (including duplication facilities and consumables) for holding the Conference;

(*d*) Appropriate premises for the offices and for the other working areas of the Organizing Committee responsible for the Conference, and the local personnel mentioned below;

(*e*) Adequate furniture and equipment for the premises referred to in (*a*) and (*b*) above to be installed prior to the start of the Conference and maintained by appropriate personnel for the duration of the Conference;

(*f*) Amplification and audio-visual, video projection equipment as may be necessary and technicians to operate them for the duration of the Conference including recording of the final session of the meeting;

(*g*) The local administrative personnel required for the proper conduct of the Conference, including the recruitment and provision of a sufficient number of bilingual secretaries, typists, clerks and other personnel for the reproduction and distribution of documents, assistant conference officers, ushers, messengers, bilingual receptionists and telephone operators. Some of these persons shall be available at least four days before the opening of the Conference and remain a maximum of two days after its closure, as required by the organizers;

(*h*) Communication facilities (telex, facsimile, telephone, word processors) for official use in connection with the Conference, office supplies and equipment for the conduct of the Conference;

(*i*) Personnel and facilities for simultaneous interpretation from English to French and vice versa for the duration of the Conference;

(*j*) Customs clearance and transportation between the port of entry and the location of the Conference for any equipment required in connection with the Conference;

(*k*) Arrangements of adequate accommodations in hotels at reasonable commercial rates for persons other than those mentioned in (*a*) above, who are participating in, attending or servicing the Conference, at the expense of these same persons;

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

(*m*) Medical facilities for first aid in emergencies within the area of the Conference. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital;

(*n*) Security protection as may be required to ensure the well-being of all participants in the Conference and the efficient functioning of the Conference free from interference of any kind.

4. The United Nations is prepared to explore with the Government and its relevant institutions additional funding sources that will enhance participation in the Conference.

D. *Privileges and immunities*

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

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

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

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

2. All participants and all persons performing functions in connection with the Conference shall have the right of unimpeded entry into and exit from South Africa. Visas and entry permits, where required, shall be granted free of charge.

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

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

(ii) The transportation provided by your Government;

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

and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except where it is agreed by the parties hereto that the injury or damage is attributable to gross negligence or willful misconduct on the part of the United Nations personnel.

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

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

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

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF SOUTH AFRICA TO THE UNITED NATIONS OFFICE AT VIENNA

25 October 1996

I have the honour to refer to your letter dated 8 July 1996, concerning an agreement between the United Nations and the Government of South Africa regarding the Second United Nations Regional Conference on Space Technology for Sustainable Development in Africa, which reads as follows:

[See Letter I]

I confirm that the above is acceptable to the Government of the Republic of South Africa and that your letter and this letter in reply shall form an agreement between the United Nations and the Republic of South Africa as of the date of this letter in reply.

(Signed) N.J. MXAKATO-DISEKO
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of South Africa to the United Nations (Vienna)

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

Basic Cooperation Agreement between the United Nations Children's Fund and the Government of Nepal. Signed at Kathmandu on 21 February 1996[20]

PREAMBLE

Whereas the United Nations Children's Fund (UNICEF) was established by the General Assembly of the United Nations of resolution 57 (*I*) of 11 December 1946 as an organ of the United Nations and, by this and subsequent resolutions, was charged with the responsibility of meeting, through the provision of financial support, supplies, training and advice, the emergency and long-range needs of children and their continuing needs and providing services in the fields of maternal and child health, nutrition, water supply, basic education and supporting services for women in developing countries, with a view to strengthening, where appropriate, activities and programmes of child survival, development and protection in countries with which UNICEF cooperates, and

Whereas His Majesty's Government of Nepal (the Government) and UNICEF wish to establish the terms and conditions under with UNICEF shall, in the framework of the operational activities of the United Nations and within its mandate, cooperate in programmes in the Kingdom of Nepal,

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

Article I

DEFINITIONS

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

(*a*) "Appropriate authorities" means central, local and other competent authorities under the law of the country;

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

(*c*) "Experts on mission" means experts coming within the scope of article VI and VII of the Convention;

(*d*) "Government" means His Majesty's Government of Nepal;

(*e*) "Greeting Card Operation" means the organizational entity established within UNICEF to generate public awareness, support and additional funding for UNICEF mainly through the production and marketing of greeting cards and other products;

(*f*) "Head of the office" means the official in charge of the UNICEF office;

(*g*) "Country" means the country where a UNICEF office is located or which receives programme support from a UNICEF office located elsewhere;

(*h*) "Parties" means the Government and UNICEF;

(*i*) "Persons performing services for UNICEF" means individual experts, consultants or firms, other than officials, engaged by UNICEF to perform services in the execution of programmes of cooperation;

(*j*) "Programmes of cooperation" means the programmes of the country in which UNICEF cooperates, as provided in article III below;

(*k*) "UNICEF" means the United Nations Children's Fund;

(*l*) "UNICEF office" means any organizational until through which UNICEF cooperates in programmes; it may include the field offices established in the country;

(*m*) "UNICEF officials" means all members of the staff of UNICEF employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates, as provided in General Assembly resolution 76 (*I*) of 7 December 1946.

Article II

Scope of the Agreement

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

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

Article III

Programmes of cooperation and master plan of operations

1. The programmes of cooperation agreed to between the Government and UNICEF shall be contained in a master plan of operations to be concluded between UNICEF, the Government and, as the case may be, other participating organizations.

2. The master plan of operations shall define the particulars of the programmes of cooperation, setting out the objectives of the activities to be carried out, the undertakings of UNICEF, the Government and the participating organizations and the estimated financial resources required to carry out the programmes of cooperation.

3. The Government shall permit UNICEF officials, experts on mission and persons performing services for UNICEF to observe and monitor all phases and aspects of the programmes of cooperation.

4. The Government shall keep such statistical records concerning the execution of the master plan of operations as the Parties may consider necessary and shall supply any of such records of UNICEF at its request.

5. The Government shall cooperate with UNICEF in providing the appropriate means necessary for adequately informing the public about the programmes of cooperation carried out under the present Agreement.

Article IV

UNICEF Office

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

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

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

Article V

Assignment to UNICEF office

1. UNICEF may assign to its office in the country officials, experts on mission and persons performing services for UNICEF, as is deemed necessary by UNICEF, to provide support to the programmes of cooperation in connection with:

(*a*) The preparation, review, monitoring and evaluation of the programmes of cooperation;

(*b*) The shipment, receipt, distribution or use of the supplies, equipment and other materials provided by UNICEF;

(*c*) Advising the Government regarding the progress of the programmes of cooperation;

(*d*) Any other matters relating to the application of the present Agreement.

2. UNICEF shall, from time to time, notify the Government of the names of UNICEF officials, experts on mission and persons performing services for UNICEF; UNICEF shall also notify the Government of any changes in their status.

Article VI

GOVERNMENT CONTRIBUTION

1. The Government shall provide to UNICEF as mutually agreed upon and to the extent possible:

(*a*) Appropriate office premises for the UNICEF office, alone or in conjunction with the United Nations system organizations;

(*b*) Costs of postage and telecommunications for official purposes:

(*c*) Costs of local services such as equipment, fixtures and maintenance of office premises;

(*d*) Transportation for UNICEF officials, experts on mission and persons performing services for UNICEF in the performance of their official functions in the country.

2. The Government shall also assist UNICEF:

(*a*) In the location and/or in the provision of suitable housing accommodation for internationally recruited UNICEF officials, experts on mission and persons performing services for UNICEF;

(*b*) In the installation and supply of utility services, such as water, electricity, sewerage, fire protection services and other services, for UNICEF office premises.

3. In the event that UNICEF all necessary permits and licences for importation of the supplies, equipment and other materials under the present Agreement. It shall be responsible for, and shall meet the costs associated with, the clearance, receipt, unloading, storage, insurance, transportation and distribution of such supplies, equipment and other materials after their arrival in the country.

4. While paying due respect to the principles of international competitive bidding, UNICEF will, to the extent possible, attach high priority to the local procurement of supplies, equipment and other materials which meet UNICEF requirements in quality, price and delivery terms.

5. The Government shall exert its best efforts, and take the necessary measures, to ensure that the supplies, equipment and other materials, as well as financial and other assistance intended for programmes of cooperation, are utilized in conformity with the purposes stated in the master plan of operations and are employed in an equitable and efficient manner without any discrimination based on sex, race, creed, nationality or political opinion. No payment shall be required of any recipient of supplies, equipment and other materials furnished by UNICEF unless, and only to such extent as, provided in the relevant master plan of operations.

6. No direct taxes, value-added tax, fees, tolls or duties shall be levied on the supplies, equipment and other materials intended for programmes of cooperation in accordance with the master plan of operations. In respect of supplies and equipment purchased locally for programmes of cooperation, the Government shall, in accordance with section 8 of the Convention, make appropriate administrative arrangements for the remission or return of any excise duty or tax payable as part of the price.

7. The Government shall, upon request by UNICEF, return to UNICEF any funds, supplies, equipment and other materials that have not been used in the programmes of cooperation.

8. The Government shall maintain proper accounts, records and documentation in respect of funds, supplies, equipment and other assistance under the Agreement. The form and content of accounts, records and documentation required shall be as agreed upon by the Parties. Authorized officials of UNICEF shall have access to the relevant accounts, records and documentation concerning distribution of supplies, equipment and other materials, and disbursement of funds.

9. The Government shall, as soon as possible, but in any event within sixty (60) days after the end of each of the UNICEF financial years, submit to UNICEF progress reports on the programmes of cooperation and certified financial statements, audited in accordance with existing Government rules and procedures.

Article VIII

INTELLECTUAL PROPERTY RIGHTS

1. The Parties agree to cooperate and exchange information on any discoveries, inventions or works resulting from programme activities undertaken under the present Agreement, with a view to ensuring their most efficient and effective use and exploitation by the Government and UNICEF under applicable law.

2. Patent rights, copyrights and other similar intellectual property rights in any discoveries, inventions or works under paragraph 1 of this article resulting from programmes in which UNICEF cooperates may be made available by UNICEF free of royalties to other Governments with which UNICEF cooperates for their use and exploitation in programmes.

Article IX

APPLICABILITY OF THE CONVENTION

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

Article X

LEGAL STATUS OF UNICEF OFFICE

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

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

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

3. The appropriate authorities shall exercise due diligence to ensure the security and protection of the UNICEF office, and to ensure that the tranquility of the office is not distributed 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, 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, or currency from one country to another within the country, to other organizations or agencies of the United Nations system;

(*c*) UNICEF shall be accorded the most favourable, legally available rate of exchange of 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 form customs duties and prohibitions and restrictions on imports and exports in respect of articless imported or exported by UNICEF for its official use. It is understood, however, that articless imported under such exemptions will not be sold in the country into which they were imported except under conditions agreed with the Government;

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

Article XII

GREETING CARDS AND OTHER UNICEF PRODUCTS

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

Article XIII

UNICEF OFFICIALS

1. Officials of UNICEF shall:

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

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

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

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

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

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

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

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

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

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

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

Article XIV

EXPERTS ON MISSION

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

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

Article XV

PERSONS PERFORMING SERVICES FOR UNICEF

1. Persons performing services on UNICEF shall:

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

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

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

Article XVI

ACCESS FACILITIES

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

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

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

Article XVII

LOCALLY RECRUITED PERSONNEL ASSIGNED TO HOURLY RATES

Persons recruited locally and assigned to hourly rates shall enjoy the terms and conditions of employment:

(*a*) In accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs or the United Nations, including UNICEF;

(*b*) Be entitled to the privileges as may be agreed upon between the Parties.

Article XVIII

FACILITIES IN RESPECT OF COMMUNICATIONS

1. UNICEF shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any 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 the outside the country, and in particular with UNICEF headquarters in New York.

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

Article XIX

FACILITIES IN RESPECT OF MEANS OF TRANSPORTATION

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

Article XX

WAIVER OF PRIVILEGES AND IMMUNITIES

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

Article XXI

CLAIMS AGAINST UNICEF

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

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

Article XXII

SETTLEMENT OF DISPUTES

Any dispute between the Government and UNICEF relating to the interpretation and application of the present Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen (15) days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article XXIII

ENTRY INTO FORCE

1. This Agreement shall enter into force immediately upon signature by the Parties.

2. The present Agreement supersedes and replaces all previous Basic Agreements, including addenda thereto, between the Government and UNICEF.

Article XXIV

The present Agreement may be modified or amended only by written agreement between the Parties hereto.

Article XXV

TERMINATION

The present Agreement shall cease to be in force six months after either of the Parties gives notice in writing to the other of its decision to terminate the Agreement. The Agreement shall, however, remain in force for such additional period as might be necessary for the orderly cessation of UNICEF activities, and the resolution of any disputes between the Parties.

IN WITNESS WHEREOF, the undersigned, being the duly authorized plenipotentiary of the Government and the duly appointed representative of UNICEF, have on behalf of the Parties signed the present Agreement, in the English language.

DONE AT Kathmandu this twenty-first day of February nineteen hundred ninety-six.

For the Government of Nepal:	For the United Nations Children's Fund
(Signed) Ram Binod BHATTARAI	*(Signed)* Daniel J. O'DELL
Acting Secretary	Representative UNICEF, Nepal
Ministry of Finance	

Similar agreements were concluded with the Government of Honduras, on 26 June 1996[21] and the Government of the Republic of Moldova, on 4 October 1996.[22]

4. AGREEMENTS RELATING TO THE UNITED NATIONS DEVELOPMENT PROGRAMME

Agreement between the United Nations Development Programme and the Government of Croatia. Signed at New York on 12 March 1996[23]

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

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

Now therefore the Government and UNDP (hereinafter called the Parties) have entered into this Agreement in a spirit of friendly cooperation.

Article I

SCOPE OF THIS AGREEMENT

1. This Agreement embodies the basic conditions under which UNDP and its executing agencies shall assist the Government in carrying out its development projects, and under which such UNDP-assisted projects shall be executed. It shall apply to all such UNDP assistance and to such project documents or other instruments (hereinafter called project documents) as the Parties

may conclude to define the particulars of such assistance and the respective responsibilities of the Parties and the executing agency hereunder in more detail in regard to such projects.

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

Article II

FORMS OF ASSISTANCE

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

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

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

(*c*) The services of members of the United Nations Volunteers (hereinafter called volunteers);

(*d*) Equipment and supplies not readily available in the Republic of Croatia (hereinafter called the country);

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

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

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

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

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

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

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

(*c*) For all activities for and in connection with implementation of this Agreement, the Government may establish a special office. Until it is established, all activities for and in relation to implementation of this Agreement shall be performed exclusively through the Ministry of Development and Reconstruction of the Republic of Croatia.

Article III

EXECUTION OF PROJECTS

1. Government shall remain responsible for its UNDP-assisted development projects and the realization of their objectives as described in the relevant project documents, and shall carry out such parts of such projects as may be stipulated in the provisions of this Agreement and such project documents. UNDP undertakes to complement and supplement the Government's participation in such projects through assistance to the Government in pursuance of this Agreement and the work plans forming part of such project documents, and through assistance to the Government in fulfilling its intent with respect to investment follow-up. The Government shall inform UNDP of the government cooperating agency directly responsible for the government's participation in each UNDP-assisted project. Without prejudice to the Government's overall responsibility for its projects, the Parties may agree that an executing agency shall assume primary responsibility for execution of a project in consultation and agreement with the cooperating agency, and any arrangements to this effect shall be stipulated in the project execution, to the Government or to an entity designated by the Government.

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

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

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

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

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

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

8. Patent rights, copyright rights and other intellectual property rights to any discoveries, inventions or work which result solely and specifically from the work done by experts and or other persons performing services on behalf of UNDP or other executing agencies under this Agreement shall belong to UNDP. In such cases, the Government shall have the right to use (and explicit) such discoveries, inventions and works within the territory of the Republic of Croatia, free of royalty or other charges.

Article IV

INFORMATION CONCERNING PROJECTS

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

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

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

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

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

Article V

PARTICIPATION AND CONTRIBUTION OF GOVERNMENT IN EXECUTION OF PROJECT

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

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

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

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

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

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

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

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

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

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

Article VI

ASSESSED PROGRAMME COSTS PAYABLE IN LOCAL CURRENCY

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

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

(*b*) Local administrative and clerical services, including necessary local secretarial help, interpreter-translator and related assistance;

(*c*) Transportation of personnel within the country;

(*d*) Postage and telecommunications for official purposes.

2. The Government shall also pay each operational expert directly the salary, allowances and other related emoluments which would be payable to one of its nationals if appointed to the post involved. It shall grant an operational expert the same annual and sick leave as the executive agency concerned grants its own officials, and shall make any arrangement necessary to permit him to take home leave to which he is entitled under the terms of his service with the executing agency concerned. Should his service with the Government be terminated by it under circumstances which give rise to an obligation on the part of an executing agency to pay him an indemnity under his contract with him, the Government shall contribute to the cost thereof the amount of separation indemnity which would be payable to a national civil servant or comparable employee of like rank whose service is terminated in the same circumstances.

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

(*a*) The necessary office space and other premises;

(*b*) Such medical facilities and services for international personnel as may be available to national civil servants;

(*c*) Simple but adequately furnished accommodation for international personnel, and the provision of such housing to operational experts under the same conditions as to national civil servants of comparable rank.

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

(*a*) An appropriate office with equipment and supplies, adequate to serve as local headquarters for UNDP in the country;

(*b*) Appropriate local secretarial and clerical help interpreters, translators and related assistance;

(*c*) Transportation of the Resident Representative and his staff for official purposes within the country;

(*d*) Postage and telecommunications for official purposes;

(*e*) Subsistence for the Resident Representative and his international recruited staff while in official travel status within the country.

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

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

Article VII

Relation to assistance from other sources

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

Article VIII

Use of assistance

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

Article IX

PRIVILEGES AND IMMUNITIES

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

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

3. Members of 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 and all locally recruited personnel, performing services on behalf of UNDP, a specialized agency or IAEA who are not covered by paragraphs 1 and 2 above the same privileges and immunities as officials of the United Nations, the specialized 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 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 4 (*a*) above shall be deemed to be documents belonging to the United Nations, the specialized agency concerned or IAEA, as the case may be;

(ii) Equipment, materials and supplies brought into or purchased or leased by those persons within the country for purposes of a project shall be deemed to be property of the United Nations, the specialized agency concerned or the 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 the UNDP or an executing agency;

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

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

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

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

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

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

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

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

Article XI

SUSPENSION OR TERMINATION OF ASSISTANCE

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

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

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

Article XII

SETTLEMENT OF DISPUTES

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

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

Article XIII

GENERAL PROVISIONS

1. This Agreement shall be subject to ratification by the Government, and shall come into force upon receipt by UNDP of notification from the Government of its ratification. Pending such ratification, it shall be given provisional effect by the Parties. It shall continue in force until terminated under paragraph 3 below. Upon the entry into force of this Agreement, it shall supersede existing Agreements concerning the provision of assistance to the Government out of UNDP resources and concerning the UNDP office in the country, and it shall apply to all assistance provided to the Government and to the UNDP office established in the country under the provisions of the Agreements now superseded.

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

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

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

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the United Nations Development Programme and of the Government, respectively, have on behalf of the Parties signed the present Agreement, in the English language in two copies at New York this 12th day of March 1996.

For the United Nations Development Programme:

(Signed) Rafeeuddin AHMED
Associate Administrator
United Nations Development

For the Government of Croatia:

(Signed) Mario NOBILO
Ambassador
Permanent Representative of the Republic of Croatia to the United Nations

5. AGREEMENTS RELATING TO THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Cooperation and Office Agreement between the Office of the United Nations High Commissioner for Refugees and the Government of Kuwait. Signed at Kuwait on 8 April 1996[24]

Whereas the Office of the United Nations High Commissioner for Refugees and the Government of the State of Kuwait firmly believe in noble humanitarian principles and values.

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

Whereas the Statute of the Office of the United Nations High Commissioner for Refugees, which was adopted by the General Assembly of the United Nations in resolution 428 (V) of 14 December 1950, stipulates, inter alia, that the High Commissioner, acting under the authority of the General Assembly shall assume the function of providing international protection, under the auspices of the United

Nations, to refugees who fall within the scope of the Statute and of seeking permanent solutions to their problems by facilitating the voluntary repatriation of such refugees, or their assimilation within new national communities,

Whereas the Office of the United Nations High Commissioner for Refugees, being a subsidiary organ established by the General Assembly in accordance with Article 22 of the Charter of the United Nations, forms an integral part of the United Nations, the status, privileges and immunities of which are governed by the Convention on the Privileges and Immunities of the United Nations, which was adopted by the General Assembly on 13 February 1946,

In view of the fact that the Office of the United Nations High Commissioner for Refugees has been engaging in humanitarian endeavours in Kuwait since the latter's recovery of its sovereignty and territorial integrity,

In view of the fact that the Office of the United Nations High Commissioner for Refugees has requested the Government of the State of Kuwait to permit it to open an office in the State of Kuwait and to grant it appropriate privileges and immunities for the performance of its work,

Whereas the Government of the State of Kuwait and the Office of the United Nations High Commissioner for Refugees wish to specify the terms and conditions for the latter's representation, within the limits of its mandate in Kuwait,

In view of the fact that the Government of the State of Kuwait has agreed to the said request,

The Government of the State of Kuwait and the Office of the United Nations High Commissioner for Refugees have concluded this Agreement in a spirit of friendly cooperation.

Article 1

DEFINITIONS

For the purposes of this Agreement, the following expressions shall have the meanings specified hereunder:

The Government:	The Government of the State of Kuwait,
UNHCR:	The Office of the United Nations High Commissioner for Refugees;
The Office:	The UNHCR Office in Kuwait;
The Office premises:	All the buildings and parts of buildings occupied by the UNHCR Office in any capacity whatsoever;
The UNHCR:	The UNHCR official responsible for the Office in the representative country.
	The persons working in the Office and performing activities under the supervision of the head of theOffice, who shall notify their names to the Ministryof Foreign Affairs of the State of Kuwait.
Family:	The husband, wife and minor children who have not yet reached full legal age as defined in the laws in force in the State of Kuwait.

Article 3

LEGAL PERSONALITY

UNHCR shall have legal personality and its office in Kuwait shall enjoy legal competence to enter into contracts, to acquire movable and immovable property and to engage in litigation, on behalf of UNHCR.

Article 3

PURPOSE OF THIS AGREEMENT

Without prejudice to the laws and regulations applicable in the State of Kuwait, the purpose of this Agreement is to define the tasks to be undertaken by UNHCR through its Office in the State of Kuwait, as well as its privileges and immunities, in the manner shown in article 4, in particular, and also in the other articles of this Agreement.

Article 4

FIELDS OF COOPERATION

(*a*) UNHCR, acting in cooperation and consultation with the Government, shall provide international protection to refugees and other persons who fall within the scope of its mandate in accordance with its Statute and the other relevant resolutions concerning UNHCR, as adopted by the General Assembly of the United Nations, and shall seek permanent solutions to their problems by facilitating their voluntary return to their countries of origin, or their assimilation within new national communities. UNHCR, acting in cooperation with the Government, shall also organize and provide humanitarian assistance for the refugees.

(*b*) The Government shall facilitate access of the staff of the UNHCR Office to all the refugees and persons falling within UNHCR's mandate in accordance with its Statute.

Article 5

PRIVILEGES AND IMMUNITIES

The Convention on the Privileges and Immunities of the United Nations which was adopted by the General Assembly on 13 February 1946 and to which the Government became a party on 13 December 1963, constitutes the general law form which the provisions of this Agreement is drawn. The Convention shall apply whenever no stipulations were provided for in this Agreement.

Article 6

IMMUNITY OF THE OFFICE PREMISES

1. The Office, as well as its funds and property, shall enjoy immunity from all forms of legal proceedings except in so far as UNCHR might waive such stipulated immunity in any particular cases.

2. The Office premises shall be inviolable and its property, funds and assets, regardless of their location or the identity of their holder in the State of Kuwait, shall enjoy immunity from search, confiscation, seizure and any other form of interference.

3. The inviolability of the Office's records and, in general, of all its documents and the documents in its possession, shall be safeguarded and they shall not be interfered with, regardless of their location or the identity of the person holding them.

4. The Office shall be exempt from customs dues, embargo orders and restrictions imposed on materials that it imports or exports for its official use, provided that such materials imported under the terms of this exemption are not sold within the country without the prior consent of the Government.

5. The Office shall be entitled to import funds, banknotes and foreign currency into the State of Kuwait or transfer the same to any other country.

6. The Office premises shall under no circumstances be used to grant asylum to any person, particularly persons who have been legally convicted for committing crimes, who are fugitives form justice, for whom an arrest warrant has been issued or whose expulsion from the country has been ordered by the Government.

Article 7

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, in matter of priorities, tariffs and charges on mail, cablegrams, telephoto, telephone, telegraph, telex and other communications.

2. 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.

3. UNHCR shall have the right to operate radio and other telecommunications equipment on United Nations registered frequencies, and those allocated by the Government.

Article 8

FACILITIES

The Government shall endeavour to grant the Office the facilities needed to enable it to discharge its functions in the State of Kuwait.

Article 9

STATUS OF THE MEMBERS OF THE OFFICE

(*a*) Without prejudice to article 5, the Office staff, regardless of their nationality shall enjoy the following privileges and immunities:

(i) Judicial immunity in respect of all their spoken or written statements or actions in their official capacity. This immunity shall continue even after the termination of employment with UNHCR;

(ii) Exemption from all taxes on the salaries and allowances that they receive;

(iii) The Office staff and their families shall be issued the required residence permits and return visas;

(iv) In the event of international crisis, the office staff and their families shall be accorded the same facilities as those granted to officials of comparable rank of diplomatic missions in regard to return to their country;

(v) They shall have the rights to import their personal effects and a vehicle for personal use free of duty according to the regulations applicable to diplomatic representatives accredited in the country;

(vi) The same privileges as those accorded to similarly ranking members of diplomatic missions accredited to the State of Kuwait in regard to currency exchange facilities.

(*b*) The Office staff who are not citizens of the State of Kuwait shall enjoy the following additional privileges and immunities:

(i) Immunity from arrest, detention and seizure of personal property;

(ii) Inviolability of their place of residence, as well as their vehicles, documents, manuscripts and all their personal effects.

Article 10

PRIVILEGES AND IMMUNITIES OF THE HEAD OF THE OFFICE

In addition to the privileges and immunities referred to in article 9, the head of the Office, as well as his spouse and minor children, shall enjoy the same privileges, immunities, exemptions and facilities as those accorded to the heads of diplomatic missions.

Article 11

PRIVILEGES AND IMMUNITIES OF PERSONS DISPATCHED ON TEMPORARY MISSIONS

Persons dispatched to the State of Kuwait on temporary missions shall benefit form the same privileges and immunities as those accorded to the Office staff under the terms of this Agreement.

Article 12

COOPERATION WITH THE GOVERNMENT

1. The privileges and immunities are granted in favour of the United Nations and UNHCR and not for the personal benefit of the individuals themselves. Consequently, UNHCR shall at times cooperate with the authorities to facilitate the proper administration of justice, ensure compliance with the police regulations and prevent any misuse of the privileges and immunities provided for in this Agreement.

2. The Government may, at any time and at its own discretion, regard any of the Office staff as personae non grata in accordance with the provisions of article 9 of the Vienna Convention on Diplomatic Relations of 1961.

3. When implementing this Agreement, the two parties shall show due regard for the common interests of the State of Kuwait and UNHCR.

Article 13

SETTLEMENT OF DISPUTES

Disputes between the State of Kuwait and UNHCR concerning the interpretation or application of this Agreement shall be settled through negotiation between the two parties or in any other manner agreed upon. The two parties shall endeavour to settle such disputes in good faith.

Article 14

DENUNCIATION OF THE AGREEMENT

Either of the two parties may denounce the Agreement by giving the other party a minimum of six months' notice, on the expiration of which this Agreement shall cease to have any effect.

Article 15

ENTRY INTO FORCE

This Agreement shall enter into force on the date on which the Government notifies UNHCR of the completion of its constitutional procedures for the ratification of this Agreement. The two parties shall show due regard for the common interests of the State of Kuwait and UNHCR during the implementation of this Agreement.

IN WITNESS WHEREOF, the two legally empowered representatives have signed this Agreement in two original copies in the Arabic and English languages, each being equally authentic.

DONE at Kuwait on 8 April 1996. Corresponding to 20th of Zulqidah 1416h.

For the Government of
The State of Kuwait:

(Signed) Sabah El Ahmed AL JABER
The First Deputy Prime Minister
Minister for Foreign Affairs

For the Office of the United Nations
High Commissioner for Refugees:

(Signed) Moustapha OMAR
Chief of Mission

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

1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.[25] APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947

State	*Date of receipt of instrument of accession or succession*	*Specialized agencies*
Nepal	11 September 1996	ILO
The former Yugoslav Republic of Macedonia	11 March 1996 (succession)	ILO, FAO (revised text of annex II), UNESCO, IMF, IBRD, WHO (second and third revised texts of annex VII), UPU, ITU, WMO, IMO, IFC, IDA, WIPO, IFAD and second revised

As at 31 December 1996, 103 States were parties to the Convention.[26]

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) Agreement between the Food and Agriculture Organization of the United Nations and the Government of Barbados regarding the FAO subregional office for the Caribbean. Signed at Bridgetown on 14 June 1996[27]

The Government of Barbados and the Food and Agriculture Organization of the United Nations

Desiring to conclude an agreement pursuant to the recommendations made by the Council of the Food and Agriculture Organization of the United Nations at its 106th (one hundred and sixth) Session regarding the establishment of subregional offices of the Organization, have agreed as follows:

Article I

DEFINITIONS

Section 1

In this Agreement:

(*a*) the expression "FAO" means the Food and Agriculture Organization of the United Nations;

(*b*) the expression "Subregional Office" means the FAO Subregional Office for the Caribbean established in Barbados;

(*c*) the expression "The Government" means the Government of Barbados;

(*d*) the expression "Director-General" means the Director-General for FAO, and during his absence from duty the Director-General, or any officer designated by him to act on his behalf;

(*e*) the expression "Subregional Representative" means the Subregional Representative of the Director-General of FAO for the Caribbean and, in his absence, his duly authorized Deputy;

(*f*) the expression "appropriate Barbadian Authorities" means such national, or other authorities in Barbados as may be appropriate in the context and in accordance with the laws and customs applicable in Barbados;

(*g*) the expression "laws of Barbados" includes legislative acts, regulations or orders, issued by or under authority of the Government or appropriate Barbadian authorities;

(*h*) the expression "Member" means a Member of FAO;

(*i*) the expression "Representatives of Members" includes all representatives, alternates, advisers and technical experts and secretaries of delegations;

(*j*) the expression "meetings convened by FAO" means meetings of the Conference of FAO, the Council of FAO, any international conference or other gathering convened by FAO and any commission, committee or subsidiary body of any of these bodies;

(*k*) the expression "Subregional Office Seat" means the premises occupied by the Subregional Office;

(*l*) the expression "archives of FAO" includes records and correspondence, documents, manuscripts, still and moving pictures and films, and sound recordings belonging to or held by FAO;

(*m*) the expression "Officers of FAO" means all members of the Staff of FAO appointed by the Director-General or on his behalf, other than manual workers locally recruited on an hourly basis;

(*n*) the expression "property", as used in article VIII, means all property, including funds, income and assets, belonging to FAO or held or administered by FAO in furtherance of its constitutional functions.

Article II

JURIDICAL PERSONALITY AND FREEDOM OF ASSEMBLY

Section 2

The Government recognizes the juridical personality of FAO and its capacity:

(*a*) To contract;

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

(*c*) To institute legal proceedings.

Section 3

The Government recognizes the right of FAO to convene meetings within the Subregional Office Seat, or with the concurrence of the appropriate Barbadian authorities, elsewhere in Barbados. At meetings convened by FAO, the Government shall take all proper steps to ensure that no impediment is place in the way of full freedom of discussion and decision.

Article III

THE SUBREGIONAL OFFICE SEAT

Section 4

The Government shall grant free of charge of FAO and FAO shall accept, as from the date of entry into force and during the life of this Agreement, the use and occupancy of premises and the use of installations suitable for the operation of the Subregional Office, as indicated in the annex to this Agreement.

Section 5

The Government shall provide, free of charge, all repairs, whether major or minor, and internal services required to maintain the Subregional Office; such services to include among others, cleaning, protection, of a quality not inferior to those provided for comparable offices of the Government.

Article IV

INVIOLABILITY OF THE SUBREGIONAL OFFICE SEAT

Section 6

(*a*) The Government recognizes the inviolability of the Subregional Office Seat which shall be under the control and authority of FAO, as provided in this Agreement.

(*b*) No officer or official of the Government, whether administrative, judicial, military or police or other person exercising any public authority within Barbados, shall enter the Subregional Office Seat to perform any official duties therein except with the consent of, and under conditions agreed to by, the Director-General or the Subregional Representative.

(*c*) Without prejudice to the provisions of article X, FAO prevent the Subregional Office Seat from being used as a refuge by persons who are avoiding arrest under any law of Barbados, or who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process of judicial proceedings.

Article V

PROTECTION OF THE SUBREGIONAL OFFICE SEAT

Section 7

(*a*) The appropriate Barbadian authorities shall exercise due diligence to ensure that the security and tranquility of the Subregional Office Seat is not disturbed by any person or group of persons attempting unauthorized entry or by creating disturbances in the immediate vicinity of the Subregional Office Seat.

(*b*) If so requested by the Subregional Representative, the appropriate Barbadian authorities shall provide a sufficient number of police for the preservation of law and order in the Subregional Office Seat and for the removal therefrom of offenders.

Article VI

PUBLIC SERVICES

Section 8

(*a*) The appropriate Barbadian authorities shall exercise, to the extent requested by the Director-General or the Subregional Representative, their respective powers to ensure that the Subregional Office Seat shall be supplied with the necessary public services, including, without limitation by reason of this enumeration, fire protection, electricity, water, sewerage, refuse collection, gas, post, telephone, telex and telegraph, and that such public services shall be supplied on terms not less favorable than those applied to any other international organization in Barbados. In case of any interruption or threatened interruption of any such services, the appropriate Barbadian authorities shall consider the needs of FAO as being of equal importance with those of any other international organization and shall take steps accordingly to ensure that the work of FAO is not prejudiced.

(*b*) Where gas, electricity or water are supplied by appropriate Barbadian authorities or bodies under their control, FAO shall be supplied at special tariffs which shall not exceed the lowest rates accorded to any other international organization in Barbados.

Article VII

COMMUNICATIONS

Section 9

FAO shall enjoy for its official communications treatment not less favorable than that accorded by the Government to any other international organization or Government, including the diplomatic mission of any such other Government, in the matter of priorities and rates on mails, cables, telegrams, telex, radiograms, telephotos, telephone and other communications and press rates for information to press and radio.

Section 10

(*a*) No censorship shall be applied to the official correspondence or other communications of FAO and to all correspondence or other communications directed to FAO or to any Officer of FAO. Such immunity shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, videos and films and sound recordings.

(*b*) FAO shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, with the same privileges and immunities extended in respect of them as are accorded to diplomatic couriers and bags.

(*c*) Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by supplemental agreement between FAO and the Government.

Article VIII

PROPERTY OF FAO AND TAXATION

Section 11

FAO, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case the Director-General shall have expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 12

The property and assets of FAO, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive or administrative action.

Section 13

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

Section 14

FAO and its assets, income and other property shall be exempt:

(*a*) From any form of direct taxation, value-added tax, fees, tolls, duties and levies. FAO, however, will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) From customs duties and from prohibitions and restrictions on imports and exports in respect of articles imported or exported by FAO for its official use, on the understanding that articles imported under such exemption will not be sold within the country except in accordance with conditions to be mutually agreed upon; such exemption being subject to the compliance with such conditions as the Comptroller of Customs may prescribe;

(*c*) From customs duties and prohibitions and restrictions in respect of the import and export of its publications, still and moving pictures, videos and films and sound recordings; such exemption being subject to the compliance with such conditions as the Comptroller of Customs may prescribe.

Article IX

FINANCIAL FACILITIES

Section 15

(*a*) Upon FAO applying to the Central Bank of Barbados, FAO:

(i) May hold funds, gold or currency of any kind and operate foreign currency accounts in any currency;

(ii) Shall be free to transfer its funds, securities, gold or currency from one country to another or within Barbados and to convert any currency held by it into any other currency.

(*b*) FAO shall, in exercising its rights under this section, pay due regard to any representations made by the Government insofar as effect can be given to such representations without detriment to the interest of FAO.

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

Article X

TRANSIT AND SOJOURN

Section 16

(*a*) The appropriate Barbadian authorities shall take all necessary measures to facilitate the entry into, sojourn in and departure from Barbados of the persons listed below, irrespective of their nationalities, when on official FAO business, shall impose no impediment to their transit to or from the Subregional Office Seat and shall afford them every necessary protection:

(i) The Independent Chairman of the Council of FAO, representatives of FAO Members, the United Nations or any specialized agency of the United Nations and their spouses;

(ii) Officers of FAO and their families;

(iii) Officers of the Subregional Office, their families and other members of their households;

(iv) Persons other than officers of FAO, performing missions for FAO and their spouses;

(v) Other persons invited to the Subregional Office Seat on official business.

The Director-General or the Subregional Representative shall communicate the names of such persons to the Government within a reasonable time.

(*b*) This section shall not apply to general interruptions in transportation, which shall be dealt with as provided in section 8(*a*) and shall not impair the effectiveness of generally applicable laws as to the operation of means of transportation.

(*c*) Visas which may be required for persons referred to in this section shall be granted without charge and as promptly as possible.

(*d*) No activity performed by any such person in his official capacity as described in subsection (*a*) shall constitute a reason for preventing his entry into Barbados or for requiring him to leave Barbados.

(*e*) No person referred to in subsection (*a*) above shall be required to leave Barbados except in the case of an abuse of the right of sojourn arising out of activities unconnected with his official functions as recognized by the Subregional Representative and in accordance with the following conditions:

(i) No proceeding shall be instituted under such laws to require any such person to leave Barbados except with the prior approval of the Minister For Foreign Affairs of Barbados;

(ii) In the case of the representative of a Member, such approval shall be given only after consultation with the authorities of the appropriate Member;

(iii) In the case of any other person mentioned in subsection (*a*), such approval shall be given only after consultation with the Subregional Representative or the Director-General, the Secretary-General of the United Nations or the principal executive officer of the appropriate specialized agency, as the case may be;

(iv) A representative of the Member concerned, the Subregional Representative or the Director-General, the Secretary-General of the United Nations or the principal executive officer of the appropriate specialized agency, as the case may be, shall have the right to appear and be heard in any such proceedings on behalf of the person against whom they shall have been instituted;

(v) Persons who are entitled to diplomatic privileges and immunities shall not be required to leave Barbados otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to Barbados.

(*f*) This section shall not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by this section come within the classes described in subsection (*a*), or the reasonable application of quarantine and health regulations.

Article XI

INDEPENDENT CHAIRMAN OF THE COUNCIL AND REPRESENTATIVES AT MEETINGS

Section 17

The Independent Chairman of the Council of FAO, representatives of Members, representatives or observers of nations and representatives of the United Nations and its specialized agencies at meetings convened by FAO shall be entitled, in the territory of Barbados while exercising their functions and during their journeys to and from the Subregional Office Seat and other places of meetings, to the same privileges and immunities as are provided for under article V (sections 13 to 17 inclusive) of the Convention on the Privileges and Immunities of the Specialized Agencies, and in paragraph 1 of annex 2 to that Convention.

Article XII

OFFICERS OF FAO MEMBERS OF FAO MISSIONS PERSONS INVITED TO THE SUBREGIONAL OFFICE SEAT ON OFFICIAL BUSINESS

Section 18

(*a*) Officers of FAO shall enjoy within and with respect to Barbados:

(i) Immunity from legal process of any kind with respect to words spoken or written and all acts performed by them in their official capacity, such immunity to continue notwithstanding the fact that the persons concerned might have ceased to be officers of FAO providing that the immunity refers to the performance of the said acts while in the performance of their office capacity;

(ii) Exemption from any form of direct taxation on salaries and emoluments paid to them by FAO;

(iii) Exemption, with respect to themselves, their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(iv) Exemption from national service obligations for officers of FAO provided that, with respect to nationals or permanent residents of the host country, such exemption shall be confined to officials whose names have, by reason of their duties, been placed on a list compiled by the Subregional Representative and approved by the Government; provided further that officials, other than those listed, who are nationals or permanent residents of Barbados, are called up for national service, the Government shall, upon request of the Subregional Representative, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption of essential work;

(v) The same protection and repatriation facilities with respect to themselves, their families and other members of their households as are accorded to diplomatic envoys in time of international crisis;

(*b*) Internationally recruited Officers of FAO (between P-1 and P-4 levels as well as General Service staff) shall in addition enjoy within and with respect to Barbados:

(i) The right to import, free of duty and other levies, prohibitions and restrictions on import, their furniture and effects, including one vehicle for personal use, within six months after first taking up their posts in Barbados or, in the case of officers who have not completed their probationary periods, within six months after confirmation of their employment with FAO;

(ii) Exemption, for officers of FAO other than Barbadian nationals or permanent residents, from any form of direct taxation on income derived from sources outside Barbados;

(iii) Freedom, for officers who are not Barbadian nationals or permanent residents, to maintain within Barbados or elsewhere foreign securities and other movable and immovable property; and while employed by FAO and at the time of termination of such employment, the right to take out of Barbados funds in foreign currencies without any restrictions or limitations provided that the said officers can show good cause for their lawful possession of such funds. In particular, they shall have the right to take out of Barbados their funds in the same currencies and up to the same amounts as they brought into Barbados through authorized channels.

Section 19

The names of the officers of FAO shall be communicated to the appropriate Barbados authorities from time to time.

Section 20

(*a*) The Subregional Representative, or his Deputy during his absence from duty, will have the status of head of diplomatic mission.

(*b*) The Government shall accord to the Subregional Representative and senior officers (P-5 level and above) of the Subregional Office designated by the Director-General the same diplomatic privileges and immunities as are accorded to the head of a diplomatic mission, including:

(i) Immunity from personal arrest or detention;

(ii) Immunity from inspection and immunity from seizure of their official baggage and immunity from seizure of their personal baggage;

(iii) Immunity from inspection of their personal baggage unless there are serious grounds for presuming that the said personal baggage contains articles, the import or export of which is prohibited by the law or controlled by the quarantine regulations of Barbados. Such inspection shall be conducted only in the presence of the Subregional Representative, the senior officers or their authorized representatives.

(*c*) The Subregional Representative and senior officers of the Subregional Office shall be incorporated by the Ministry of Foreign Affairs, in consultation with the Director-General, into the appropriate diplomatic categories and shall enjoy the customary exemptions granted to such diplomatic categories in Barbados.

(*d*) All officers of FAO shall be provided with a special identity card.

Section 21

Persons other than officers of FAO who are members of FAO missions or who are invited to the Subregional Office Seat by FAO on official business shall be accorded the privileges and immunities specified in section 18 except those specified in subsection (*a*)(*v*). In addition, they shall enjoy immunity from personal arrest or detention and immunity from seizure of their personal baggage.

Section 22

(*a*) The privileges and immunities accorded by this article are conferred in the interests of FAO and not for the personal benefit of the individuals themselves. The Director-General shall waive the immunity of any officer in any case, where, in his opinion, the immunity would impede the course of justice and could be waived without prejudice to the interests of FAO.

(*b*) FAO and its officers shall cooperate at all times with the appropriate Barbadian authorities to facilitate the proper administration of justice, to secure the observance of police regulations and to prevent the occurrence of any abuses in connection with the privileges and immunities accorded by this article.

Article XIII

LAISSEZ-PASSER

Section 23

The Government shall recognize and accept the United Nations laissez-passer issued to officers of FAO, and to the Independent Chairman of the Council, as a valid travel document equivalent to a passport. Applications for visas from holders of United Nations laissez-passer shall be dealt with as speedily as possible.

Section 24

Similar facilities to those specified in section 23 shall be accorded to persons who, though not the holders of United Nations laissez-passer, have a certificate that they are traveling on the business of FAO.

Article XIV

GENERAL PROVISIONS

Section 25

(*a*) The Director-General and the Subregional Representative shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur, and for this purpose shall establish such rules and regulations as they may deem necessary and expedient for officers of FAO and persons performing missions for FAO.

(*b*) Should the Government consider that an abuse of privilege or immunity conferred by this Agreement has occurred, the Director-General or the Subregional Representative shall, upon request, consult with the appropriate Barbadian authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Director-General and the Government, the matter shall be determined in accordance with the procedure set out in article XV.

Section 26

The Subregional Representative shall also represent FAO in Barbados, and shall be responsible, within the limits of the authority delegated to him, for all aspects of FAO's activities in the country. In the effective performance of his functions, the Subregional Representative shall have direct access to appropriate policy and planning levels of the Government in the agriculture, fishery and forestry sectors of the economy, as well as to central planning authorities. Any technical assistance provided by FAO from its own budgetary resources shall be covered by specific agreements between the Government and FAO.

Article XV

SUPPLEMENTAL AGREEMENTS AND SETTLEMENT OF DISPUTES

Section 27

(*a*) The Government and FAO may enter into such supplemental agreements as may be necessary within the scope of this Agreement.

(*b*) The provisions of the Convention on the Privileges and Immunities of the Specialized Agencies shall, where they relate to the same subject matter, be treated as complementary to this Agreement.

Section 28

Any dispute between FAO and the Government concerning the interpretation or application of this Agreement or any supplemental agreements, or any question affecting the Subregional Office Seat or the relationships between FAO and the Government, which is not settled by negotiation or other agreed mode of settlement shall be referred for final decision to a tribunal of three arbitrators one to be chosen by the Director-General, one to be chosen by the Minister for Foreign Affairs of Barbados and the third, who shall be Chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third, such third arbitrator shall be chosen by the President of the International Court of Justice.

Article XVI

ENTRY INTO FORCE, OPERATION AND DENUNCIATION

Section 29

(*a*) This Agreement shall enter into force upon notification by both Parties that their respective internal requirements have been complied with.

(*b*) Consultants with respect to modification of this Agreement shall be entered into at the request of the Government or FAO. Any such modification shall be by mutual consent.

(*c*) This Agreement shall be construed in the light of its primary purpose to enable the Subregional Office fully and efficiently to discharge its responsibilities and fulfil its purpose.

(*d*) Where this Agreement imposes obligations on the appropriate Barbadian authorities, the ultimate responsibility for the fulfillment of such obligations shall rest with the Government.

(*e*) This Agreement and any supplemental agreement entered into by the Government and FAO pursuant to this Agreement shall cease to be in force six months after either the Government or FAO shall have given notice in writing to the other of its decisions to terminate this Agreement, except for such provisions as may be applicable in connection with the orderly termination of the operations of FAO at its Subregional Office in Barbados and the disposition of its property therin.

Section 30

The Agreement between the Government and FAO regarding the arrangements to be made to appoint an FAO representative in Barbados and for the establishment of his office, constituted by the exchange of letters between the

Government and FAO of 14 March 1978 and 31 August 1978, is terminated with effect from the date of entry into force of the present Agreement; provided that such termination shall not affect any rights, obligations or liabilities of either party outstanding under that Agreement at the time of its termination.

IN WITNESS WHEREOF the Government and the Food and Agriculture Organization of the United Nations have signed this Agreement in duplicate in the English language.

For the Food and Agriculture Organization of the United Nations:	For the Government of Barbados:
Bridgetown	Bridgetown
(Signed) Lawrence A. WILSON	*(Signed)* Billie MILLER
On the 14th day of June 1996	On the 14th day of June 1996
The Subregional Representative For the Caribbean On behalf of the Director-General	Minister for Foreign Affairs

Similar agreements were concluded between the Food and Agriculture Organization of the United Nations and the Independent State of Western Samoa,[28] on 10 January 1996, and Tunisia,[29] on 3 August 1996.

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

Agreements concerning specific sessions held outside FAO headquarters, containing provisions on privileges and immunities of FAO and with participants similar to those in the standard text published in the 1972 Juridical Yearbook were concluded in 1996 with the Governments of the following countries acting as hosts to such sessions: Brazil, Burkina Faso, Cameroon, Central African Republic, Costa Rica, Cyprus, Finland, France, Germany,[28] Ghana, Hungary, Iceland, Ireland, Israel, Italy,[30] Japan, Kenya, Lebanon, Malaysia, Mali, Mauritania, Morocco, Myanmar, New Zealand, Norway, Panama, Paraguay, Philippines, Republic of Korea, Samoa, Spain,[30] Sri Lanka, Sweden, Uganda, United States of America and Zimbabwe.

(*c*) Agreements based on the standard "Memorandum of Responsibilities" in respect of FAO 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 those in the standard text published in the 1972 Juridical Yearbook were concluded in 1996 with the Governments of the following countries acting as hosts to such training activities: Benin, Cote d'Ivoire, Mauritius and Romania.

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

Agreements relating to conferences, seminars and other meetings

(*a*) Agreement between the United Nations Educational, Scientific and Cultural Organization and the Government of Jamaica concerning the Seventh Regional Conference of Ministers of Education of Member States in Latin America and the Caribbean (MINEDLAC VII) and the Sixth Meeting of the Intergovernmental Regional Committee for the Major Project in the field of Education in Latin America and the Caribbean (PROMEDLAC VI), Kingston 13-17 May 1996

PRIVILEGES AND IMMUNITIES

The Government of Jamaica shall apply, in all matters relating to these meetings, 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 Jamaica has been a party since 4 November 1963. In particular, the Government shall ensure that no restriction is placed upon the entry into, sojourn in and departure from the territory of Jamaica 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 Jamaica 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 Jamaica shall be entitled to adopt appropriate measures to ensure the protection, particularly against fire and other risks, of the above-mentioned premises, facilities, furniture and persons. They may also claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization.

4. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

(*a*) Agreement between the United Nations Industrial Development Organization and the Government of Italy concerning the institutional arrangements for the International Centre for Science and High Technology. Signed at Vienna on 9 November 1993[31]

Whereas article 2 (*j*) of the Constitution of the United Nations Industrial Development Organization (hereinafter referred to as "UNIDO") provides that UNIDO shall promote, encourage and assist in the development, selection, ad-

aptation, transfer and use of industrial technology, with due regard for the socio-economic conditions and the specific requirements of the industry concerned, with special reference to the transfer of technology from the industrialized to the developing countries as well as among the developing countries themselves;

Whereas the General Conference of UNIDO took note by resolution GC.4/Res.14 that an international center for science and high technology will be established as described in document GC.4/39 of the General Conference;

Whereas the Government of Italy (hereinafter referred to as "the Government") has welcomed the establishment of the International Centre for Science and High Technology (hereinafter referred to as "ICS") and has declared its readiness to provide UNIDO with financial, logistical and other support, including the necessary premises, for ICS;

Whereas the objective of the ICS is to develop and strengthen the scientific and technological capabilities of developing countries in the creation and application of scientific knowledge;

Whereas the paucity of research capacities in developing countries can be overcome by providing scientists from developing countries with training and access to state-of-the-art equipment and facilities relevant to the development of science-based industry;

Whereas the beneficiaries of the activities of ICS will be scientists from developing countries and through them, the technologists and industrialists in such countries;

Whereas it is expected that contributions from further donors interested in the activities of ICS will be received;

Now therefore the Government and UNIDO hereby agree as follows:

Article I

LEGAL STATUS

1. The International Centre for Science and High Technology is established within the legal framework of UNIDO as a scientific institution with autonomy as defined in the present Agreement.

2. ICS will comprise three institutes:

(*a*) The International Institute for Pure and Applied Chemistry;

(*b*) The International Institute for Earth, Environmental and Marine Sciences and Technologies, and

(*c*) The International Institute for High Technology and New Materials.

3. The headquarters of ICS, including facilities for the three institutes referred to in paragraph 2 above, will be located in Trieste, Italy, and facilities for the International Institute for Earth, Environmental and Marine Sciences and Technologies will also be established in Venice.

Article II

OBJECTIVES

The objectives of ICS will be the following:

(*a*) To further, for the benefit of developing countries, the utilization of applied science for peaceful aims, and the development of science-based technologies;

(*b*) To promote and stimulate high-level research with a direct involvement of developing countries' scientists, and

(*c*) To provide conditions and structures for the professional promotion of scientists and technicians of developing countries.

Article III

FUNCTIONS

To fulfil the objectives mentioned in article II, ICS will carry out the following main functions: long-term and short-term training; research; conduct of workshops and scientific meetings; operation of a scheme of visiting scientists and associates; advisory services, cooperation with industry, cooperation with and affiliation of relevant national institutions, transfer of technologies.

Article IV

ACTIVITIES

The three institutes will carry out activities selected form one or more of the following subject areas:

(*a*) The International Institute for Pure and Applied Chemistry: macromolecules, catalysis, reactivity, computer chemistry, synthesis, fine pharmaceuticals and interfacial phenomena;

(*b*) The International Institute for Earth, Environmental and Marine Sciences and Technologies: recent advances in geophysics prospecting, earthquake prediction and engineering, atmosphere and oceans, environmental aspects of climate, water pollution and marine research, including marine biotechnology and activities connected with mining, offshore engineering and coastal management;

(*c*) The International Institute for High Technology and New Materials: computer science and microelectronics, lasers, fibre optics, communication physics, superconductivity, semiconductors, composite materials and energy conversion.

Article V

FINANCIAL ARRANGEMENTS

1. To finance the activities of ICS, the Government agrees to pay for the first year a minimum sum of seven (7) billion Italian lire to UNIDO as a special purpose contribution to the Industrial Development Fund. The level of the contribution shall be reviewed, every year, on the basis of the recommendations of the Steering Committee. At the beginning of each calendar year UNIDO shall write to the Government requesting the payment of the aforesaid amount and submitting all the relevant documentation and information.

2. UNIDO shall credit the contributions of the Government to a sub-account to the Industrial Development Fund, which is to be created for this purpose. Interest accruing thereon shall also be credited to this account. The amounts credited to the account shall be utilized by UNIDO in conformity with the budge and this Agreement.

3. The Government may make further contributions to fulfil the initial needs of ICS. Other Governments as well as public and private bodies may participate in ICS funding.

4. The account shall be subject exclusively to the internal and external auditing procedures laid down in the financial regulations, rules and directives of UNIDO.

5. UNIDO shall provide the Government with the following statements and reports in the format normally followed by UNIDO for official accounting and financial reporting:

(*a*) An annual financial statement showing income expenditures, assets and liabilities as of 31 December of each year with respect to the funds provided by the Government;

(*b*) A final financial statement within six months a termination of the present Agreement.

In accordance with UNIDO's Financial Regulations and Rules, the above financial statements will be expressed in United States dollars using the appropriate United Nations operational rate of exchange.

6. In the event of termination of this Agreement, any balance of the funds in the account shall continue to be held by UNIDO until all expenditures incurred by UNIDO have been satisfied from such funds.

7. ICS shall be financed exclusively from voluntary contributions to be made by UNIDO for the purpose of ICS. Administrative and support cost incurred by UNIDO for the activities of ICS, referred to in articles III and IV of the present Agreement, shall be reimbursed to UNIDO and charged to the account at a rate of five (5) per cent of all expenditures incurred on those activities. With the agreement of the Managing Director and after informing the Steering Committee, the account may also be charged with any unforeseen and identifiable administrative and support costs incurred by UNIDO and not provided for in the programme budget.

Article VI

ORGANIZATION AND ADMINISTRATION

The organization and the administration of ICS shall, under the authority of the Director-General of UNIDO, comprise the following organs: the Rector, the Managing Director and the ICS Secretariat, the Steering Committee and the International Scientific Committee.

1. The Rector of ICS shall be nominated by the Director-General of UNIDO after consultation with the Steering Committee, shall supervise all the scientific activity of ICS and shall be the President of the International Scientific Committee.

2. On the basis of a list of candidates submitted by the Steering Committee, the Managing Director of ICS shall be appointed by the Director-General of UNIDO, under whose authority he shall operate and shall be in charge of the bear responsibility for the administration and management of ICS.

3. The Steering Committee will be composed, during the first application of the present statute, of two representatives of the Government, one of which will be scientist, a representative of UNIDO and a representative of developing countries selected on the proposal of the Director-General on a rotating basis. Subsequently, on the proposal of the Director-General, the Committee shall co-opt other members representing major donors. The Steering Committee will be convened for the first meeting by the Director-General and will establish rules of procedure for its own functioning, to be submitted for approval to the Director-General.

4. The International Scientific Committee shall reflect the relevant scientific disciplines and include an adequate number of qualified scientists and technologist from developing countries and from the host country. The composition of the Committee will be decided by the Director-General of UNIDO, taking into consideration the proposals of the Steering Committee, the Managing Director and the Rector. The Director-General of UNIDO or his representative will be entitled to participate in the work of the Committee. The Committee will be convened at least once a year. The Committee will review the programme and budget of ICS from the scientific point of view and will make comments and recommendations thereon.

5. The ICS Secretariat will service the Steering Committee and the International Scientific Committee. The Director-General of UNIDO shall, in accordance with the applicable Staff Regulations and Rules of UNIDO, appoint the staff of the ICS Secretariat, which initially will be composed of no more than 8 staff recruited internationally and of no more than 14 staff recruited locally. Thereafter, the Steering Committee will consider, when reviewing and adopting the programme and budget, the need for additional staff, as necessary.

Article VII

PROGRAMME AND BUDGET

The programme and budget of ICS will be drawn up by the Managing Director, after consultation with the Rector and after having considered the recommendations of the International Scientific Committee. The programme and budge are then presented to the Steering Committee for review and adoption prior to their submission to the Director-General of UNIDO for his approval. The Director-General of UNIDO may require the Steering Committee to modify the programme and budget. The programme shall be for a five-year period and will be extended biennially according to the financial cycle of UNIDO with effect from the beginning of the calendar year. Payments will be made on a yearly basis.

Article VIII

SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation or application of this Agreement that is not settled by negotiation or as may otherwise be agreed, may at the request of either Party be submitted to an arbitral tribunal for decision. The Director-General of UNIDO and the Government shall each designate one arbitrator, and the two arbitrators so designated shall elect a third, who shall be the chairman of the tribunal. If within thirty days of the request for arbitration, either Party has not designated an arbitrator, either Party may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if within thirty days of eh 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 decisions shall be made by majority vote. The arbitral procedure shall be established by the tribunal, whose decisions, including all rulings concerning its constitution, procedure, jurisdiction and the division of the expenses of arbitration between the Parties, shall be binding on all parties to the dispute. The remuneration of the arbitrators shall be determined on the same basis as that of ad hoc judges of the International Court of Justice under Article 32, paragraph 4, of its Statute.

Article IX

SUPPLEMENTAL AGREEMENTS

The Parties may enter into such supplemental agreements or arrangements as may be necessary and appropriate.

Article X

ENTRY INTO FORCE, DURATION AND MEDICATIONS

1. This Agreement and the related Agreement between the United Nations Industrial Development Organization and the Government of Italy concerning the Establishment of the Seat of the International Centre for Science and High Technology shall enter into force simultaneously and when the Parties inform each other by a written notification that all the necessary internal measures have been completed.

2. Consultations with regard to modifications of this Agreement shall be entered into at the request of UNIDO or the Government.

3. The present Agreement shall be concluded for an indefinite period on the understanding, however, that each Party shall have the right to terminate it upon giving twenty-four (24) months' notice in writing to the other Party. Upon termination of the present Agreement, the Agreement referred to in paragraph 1 above shall be suspended.

4. This Agreement shall cease to be in force:

(*a*) By mutual consent of UNIDO and the Government, and

(*b*) If ICS is transferred from the territory of Italy.

DONE at Vienna, this 9th day of November 1993 in duplicate in English.

For the United Nations Industrial Development Organization:

(Signed) Mauricio DE MARIA Y CAMPOS
Director-General

For the Government of Italy:

(Signed) Carrado TALIANI
Ambassador
Permanent Representative of
Italy to UNIDO

Exchange of letters

I

LETTER FROM THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

Vienna, 9 November 1993

I have the honour to refer to the Agreement between UNIDO and the Government of Italy concerning the Institutional Arrangements for the International Centre for Science and High Technology (ICS), which we have signed today.

In particular, I would like to refer to article V of the Agreement, entitled "Financial arrangements", and to our consultants in this connection.

Accordingly, I have the honour to propose that your Government and UNIDO agree on the following additional points:

(1) The costs of two and one half General Service posts at UNIDO headquarters shall be charged to the project;

(2) The present Exchange of Letters shall constitute an integral part of the Agreement between UNIDO and the Government of Italy concerning the Institutional Arrangements for the International Centre for Science and High Technology (ICS).

If the foregoing proposals are acceptable to your Government, I further have the honour to propose that this letter and your letter of confirmation on behalf of the Government of Italy shall constitute an agreement, which shall come into effect on the date of entry into force of the Agreement on the Institutional Arrangements for the International Centre for Science and High Technology.

(Signed) Mauricio DE MARIA Y CAMPOS
Director-General

II

LETTER FROM THE PERMANENT REPRESENTATIVE OF ITALY TO THE INTERNATIONAL ORGANIZATIONS IN VIENNA

Vienna, 9 November 1993

I have the honour to acknowledge the receipt of your letter dated 9 November 1993, which reads as follows:

[*See Letter I*]

I also have the honour to accept the foregoing proposals and to confirm that your letter and this reply shall be regarded as constituting an agreement between the Government of Italy and UNIDO.

(Signed) Corrado TALIANI
Permanent Representative of Italy of Unido

(*b*) Relationship Agreement between the United Nations Industrial Development Organization and the Islamic Educational, Scientific and Cultural Organization[32]. Signed at Rabat on 16 May 1996

Article I

COOPERATION AND CONSULTATION

The United Nations Industrial Development Organization (hereinafter referred to as "UNIDO") and the Islamic Educational Scientific and Cultural Organization (hereinafter referred to as "ISESCO"), with a view to promoting the attainment of the objectives laid down by the Constitution of UNIDO and the Charter of ISESCO, agree to act in close cooperation on matters of mutual interest with a view to harmonizing their efforts towards greater effectiveness, as far as possible, having due regard to their respective objectives and functions.

Article II

REPRESENTATIVE

1. UNIDO shall be permitted to participate, without the right to vote, in the deliberations of the General Conference and the Executive Council of ISESCO on matters of particular concern to it.

2. ISESCO shall be permitted to participate, without the right to vote, in the deliberations of the General Conference and the Industrial Development Board of UNIDO on matters of particular concern to it.

Article III

EXCHANGE OF INFORMATION AND DOCUMENTS

UNIDO and ISESCO shall undertake an exchange of relevant information and documents, subject to such restrictions and arrangements as may be considered necessary by either Party to preserve the confidential nature of certain information and documents.

Article IV

FIELDS OF COOPERATION

1. The fields of which cooperation shall relate, in the context set forth in article I, shall include those listed in the annex to this Agreement.

2. Any minor and ordinary expenditure relating to the implementation of this Agreement shall be borne by the respective Party to the Agreement.

3. If the cooperation proposed by one of the Parties to the other in accordance with this Agreement entails expenditure beyond minor and ordinary expenditures, consultations shall be held between UNIDO and ISESCO to determine the availability of resources required, the most equitable way of meeting such expenditure and, if resources are not readily available, the most appropriate ways to obtain the necessary resources.

Article V

IMPLEMENTATION OF THE AGREEMENT

The Director-General of UNIDO and the Director-General of ISESCO may take the arrangements necessary for ensuring satisfactory implementation of the Agreement.

Article VI

TERMINATION OF THE AGREEMENT

Either Party may terminate this Agreement, subject to six months' written notice. If one of the parties decides to terminate this Agreement, the obligations previously entered into through projects implemented under this Agreement should not be affected.

Article VII

ENTRY INTO FORCE

This Agreement shall enter into force upon signature by the Director-General of UNIDO and the Director-General of ISESCO.

Article VIII

LANGUAGE

This Agreement has been drawn up in duplicate in English.

For the United Nations Industrial Development Organization:

(Signed) Mauricio DE MARIA Y CAMPOS
Director-General

Rabat, 16 May 1996

For the Islamic Educational, Scientific and Cultural Organization:

(Signed) Abdulaziz Othman ALTWAIJRI
Director-General

Rabat, 16 May 1996

ANNEX

Fields of cooperation pursuant to article IV of the Agreement

- Technical and vocational education
- Integration of women in development activities
- Promotion of traditional arts and crafts
- Training of manpower for repair and maintenance of laboratory equipment
- Strengthening of applied research
- Promotion of linkages between universities/research organizations and production sectors
- Protection of environment: abatement of industrial pollution; waste recycling; capacity, building for sustainable development
- Energy: renewable and non-polluting energy sources; efficiency of energy use
- Exchange of information and databases

(*c*) Relationship Agreement between the United Nations Industrial Development Organization and the Intergovernmental Organization for Marketing Information and Cooperation Services for Fishery Products in Africa. Signed at Abidjan on 24 June 1996 and at Vienna on 3 October 1996[33]

Article I

COOPERATION AND CONSULTATION

The United Nations Industrial Development Organization (hereinafter referred to as "UNIDO") and the Intergovernmental Organization for Marketing Information and Cooperation Services for Fishery Products in Africa (hereinafter referred to as "INFOPECHE"), with a view to promoting the attainment of the objectives laid down by the Constitution of UNIDO and the Final Act of the Conference of Plenipotentiaries of States members of the Intergovernmental Organization for Marketing Information and Cooperation Services for Fishery Products in Africa establishing INFOPECHE, agree to act in close cooperation

on matters of mutual interest with a view to harmonizing their efforts towards greater effectiveness, as far as possible, having due regard to their respective objectives and functions.

Article II

REPRESENTATION

1. INFOPECHE shall be permitted to participate, without the right to vote, in the deliberations of the General Conference and the Industrial Development Board of UNIDO on matters of particular concern to it.

2. UNIDO shall be permitted to participate, without the right to vote, in the deliberations of the INFOPECHE Governing Council sessions on matters of particular concern to it.

3. UNIDO and INFOPECHE shall also make any necessary arrangements for ensuring reciprocal representation at appropriate meetings convened under their respective auspices.

Article III

EXCHANGE OF INFORMATION AND DOCUMENTS

UNIDO and INFOPECHE shall undertake an exchange of relevant information and documents, subject to such restrictions and arrangements as may be considered necessary by either Party to preserve the confidential nature of certain information and documents.

Article IV

FIELDS OF COOPERATION

1. The fields to which cooperation shall relate, in the context set forth in article I, shall include those listed in the annex to this Agreement.

2. Any minor and ordinary expenditure relating to the implementation of this Agreement shall be borne by the respective Party to the Agreement.

3. If the cooperation proposed by one of the Parties to the other in accordance with this Agreement entails expenditure beyond minor and ordinary expenditures, consultations shall be held between UNIDO and INFOPECHE to determine the availability of resources required, the most equitable way of meeting such expenditure and, if resources are not readily available, the most appropriate ways to obtain the necessary resources.

Article V

IMPLEMENTATION OF THE AGREEMENT

The Director-General of UNIDO and the Director of INFOPECHE may make the arrangements necessary for ensuring satisfactory implementation of the Agreement.

Article VI

TERMINATION OF THE AGREEMENT

Either Party may terminate this Agreement, subject to six months' written notice. If one of the Parties decides to terminate this Agreement, the obligations previously entered into through projects implemented under this Agreement should not be affected.

Article VII

ENTRY INTO FORCE

This Agreement shall enter into force upon signature by the Director-General of UNIDO and the Director of INFOPECHE.

Article VIII

LANGUAGE

This Agreement has been drawn up in duplicate in English.

For the United Nations Industrial Development Organization:

(Signed) Mauricio DE MARIA Y CAMPOS
Director-General
Vienna, 3 October 1996

For the Intergovernmental Organization for Marketing Information and Cooperation Services for Fishery Products in Africa:

(Signed) Amadou TALL
Director
Abidjan, 24 June 1996

ANNEX

Fields of cooperation pursuant to article IV of the Agreement:*

1. Exchange of publications.
2. Provision of technical and supervisory support to UNIDO-funded fisheries development projects.
3. Fisheries project identification, preparation and analysis.

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* The modalities of cooperation and financing in the above-mentioned fields would be considered by the two institutions individually for each project.

Please note that paragraph 6 of the "Guidelines regarding relationship agreements with organizations of the United Nations system other than the United Nations, and with other intergovernmental and governmental organizations, and regarding appropriate relations with non-governmental and other organizations" (GC.1/INF.6) as adopted by the General Conference of UNIDO states the following:

"The following criteria should be fulfilled by intergovernmental or governmental organizations with which the UNIDO may enter into agreements:

(*a*) The intergovernmental or governmental organization shall be actively involved in one or more aspects of the activities of UNIDO;

(*b*) It must be willing to make an effective contribution towards the realization of the mandate of UNIDO in conformity with the principles of the Constitution.

4. Subregional trainings in fish inspection and quality assurance based on hazards analysis critical control points (HACCP).
5. Design and conduct of management trainings for fish firm managers in INFOPECHE region.
6. Fisheries projects evaluation.
7. Regional Seminar on Investment Opportunities in the West African Fisheries.
8. Preparation of fisheries investment profile for each INFOPECHE member country.
9. Design and costing of small-scale fresh fish processing plants.
10. Preparation of catalogue on current fisheries equipment, plant and machineries.
11. Preparation of Fish Exporters and Importers Guide.
12. Establishment of fisheries investment promotion centers in INFOPECHE member countries.
13. Participation in fish trade fairs and exhibitions.
14. Any other areas deemed beneficial to both Parties.

(*d*) Relationship Agreement between the United Nations Industrial Development Organization and the International Centre for Genetic Engineering and Biotechnology. Signed at Trieste on 21 November 1996 and at Vienna 13 December 1996[34]

Article I

COOPERATION AND CONSULTATION

The United Nations Industrial Development Organization (hereinafter referred to as "UNIDO") and the International Centre for Genetic Engineering and Biotechnology (hereinafter referred to as "ICGEB"), with a view to promoting the attainment of the objectives laid down by the Constitution of UNIDO and the Statutes establishing ICGEB, agree to act in close coordination and cooperation on matters of mutual interest and to harmonize their efforts in areas of common endeavour towards greater effectiveness, as far as possible, having due regard to their respective objectives and functions.

Article II

INSTITUTIONAL AFFILIATION AND RELATIONS WITH OTHER UNITED NATIONS BODIES

1. In view of the historical relationship and institutional affiliation of ICGEB to UNIDO, and in accordance with the decisions of the Board of Governors of ICGEB, the parties agree that ICGEB, acting through UNIDO, shall seek to enter into formal arrangements with the United Nations and may enter into such arrangements with other specialized agencies of the United Nations system.

2. Notwithstanding paragraph 1 above, ICGEB shall remain an entity separate and distinct from UNIDO. Nothing in this Agreement shall make UNIDO liable for the acts or obligations of ICGEB, or ICGEB liable for the acts or obligations of UNIDO.

Article III

REPRESENTATION OF ICGEB IN UNIDO BODIES

ICGEB shall be permitted to participate, without the right to vote, in the deliberations of the General Conference and the Industrial Development Board of UNIDO on matters of particular concern to it.

Article IV

FIELDS OF COOPERATION

1. The fields to which close coordination and cooperation shall relate, in the context set forth in article I, shall include those listed in annex to this Agreement, which is an integral part of this Agreement.

2. Any minor and ordinary expenditure relating to the implementation of this Agreement shall be borne by the respective Party to this Agreement.

3. If the cooperation proposed by one of Parties to the other in accordance with this Agreement entails expenditure beyond minor and ordinary expenditures, consultations shall be held between UNIDO and ICGEB to determine the availability of resources required, the most equitable way of meeting such expenditure and, if resources are not readily available, the most appropriate ways to obtain the necessary resources.

Article V

EXCHANGE OF INFORMATION AND DOCUMENTS

UNIDO and ICGEB shall undertake an exchange of relevant information and documents, subject to such restrictions and arrangements as may be considered necessary by either Party to preserve the confidential nature of certain information and documents.

Article VI

IMPLEMENTATION OF THE AGREEMENT

The Director-General of UNIDO and the Director of ICGEB may make the arrangements necessary for ensuring satisfactory implementation of this Agreement.

Article VII

TERMINATION OF THE AGREEMENT

Either Party may terminate this Agreement, subject to 6 (six) m o n t h s written notice. If one of the Parties decides to terminate this Agreement, the obligations previously entered into under this Agreement should not be affected.

Article VIII

ENTRY INTO FORCE

This Agreement shall enter into force upon signature by the Director-General of UNIDO and the Director of ICGEB.

Article IX

LANGUAGE

This Agreement has been drawn up in duplicate in English.

For the International Centre for Genetic Engineering and Biotechnology;

(Signed) Abdulqawi A. YUSEF
Director
Trieste, 21 November 1996

For the United Nations Industrial Development Organization:

(Signed) Mauricio DE MARIA Y CAMPOS
Director-General
Vienna, 13 December 1996

ANNEX

Fields of coordination and cooperation pursuant to article IV of the Agreement

A. ESTABLISHMENT OF A LIAISON OFFICE

1. With a view to facilitating cooperation in the areas specified under B, C, D and E below, a UNIDO/ICGEB liaison office would be established within UNIDO's Technoloty Services Division.

B. BIOTECHNOLOGY PROJECTS BACKSTOPPED BY UNIDO

2. UNIDO will refer to ICGEB such projects for advice on planning and implementations modalities. Subject to consultation and to the availability of personnel and infrastructure resources, ICGEB will have the first option for undertaking the technical implementation of such projects.

C. PROJECTS RELATED TO THE WORK PROGRAMME OF ICGEB

3. ICGEB will contract UNIDO to provide specific legal and administrative support services on terms and conditions to be agreed upon.

4. UNIDO will provide advise on safety standards and intellectual property protection for products at commercial and pre-commercial stage development by the ICGEB affiliated centers. It will also assist ICGEB's affiliated centers in material transfer and licensing agreements, as well as broker commercial partnership with third parties as the case may arise.

D. OTHER AREAS OF MUTUAL INTEREST

5. Formulation and development of proposals for joint projects ICGEB/UNIDO, including engagement in fundraising activities to expand their respective work programmes

in the areas of biotechnology, biosafety and bioethics. New project activities will be implemented on a cost-sharing basis to be agreed upon case by case.

6. Joint provision by ICGEB and UNIDO of advisory services to ICGEB member States on biotechnology policy and programme formulation.

E. Standing Committee

7. Establishment of an appropriate organ (such as a Standing Committee ICGEB/UNIDO to be convened twice a year and serviced by the Liaison Office) which will be responsible for the harmonization of biotechnology policy with regard to, inter alia, biosafety, the Convention on Biological Diversity, the Convention on Biological Weapons, intellectual property protection and bioethics. The two organizations will undertake publication of joint policy papers as the case may arise.

5. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) Agreement between the International Atomic Energy Agency and the United Nations Educational, Scientific and Cultural Organization concerning the joint operation of the International Centre for Theoretical Physics at Trieste. Signed at Vienna on 15 March 1993 and at Paris on 19 March 1993[35]

Whereas an Agreement for cooperation between the International Atomic Energy Agency (hereinafter called the "Agency") and the United Nations Educational, Scientific and Cultural Organization (hereinafter called "UNESCO")[36] has been in force since 1 October 1958;

Whereas both organizations are concerned with the development of the physical sciences in their member States and particularly in the developing countries;

Whereas both organizations have expressed their willingness to continue to operate the International Centre for Theoreticla Physics at Trieste (hereinafter called the "Centre") jointly;

Bearing in mind the recent Agreement between the International Atomic Energy Agency, the United Nations Educational Scientific and Cultural Organization and the Government of the Republic of Italy Concerning the International Centre for Theoretical Physics at Trieste;[37]

Now, therefore, the Agency and UNESCO have agreed as follows:

Article I

Principles of collaboration

1. The Centre's scientific activities will constitute a joint programme carried out by both organizations in accordance with the terms of this Agreement. They agree to maintain the purpose and functions of the Centre as set forth in paragraphs 2 and 3 of this article.

2. The purpose of the Centre is to foster, through training and research progress in physics, particularly theoretical physics, in accordance with the Constitution of UNESCO and the Statue of the Agency. In so doing, it pays special attention to the needs of developing countries.

3. The Centre has the following functions:

(*a*) To train young scientists for research, especially from developing countries;

(*b*) To help in fostering the growth of advanced studies of progress in physics, particularly theoretical physics, especially in developing countries;

(*c*) To conduct original research; and

(*d*) To provide an international forum for personal contacts between scientists from countries at all stages of development.

4. The administration of the Centre shall be carried out by UNESCO on behalf of both organizations, in accordance with the provisions of this Agreement. Relations with the Government of the Republic of Italy in respect of all matters relating to the Centre shall be the joint responsibility of both organizations and shall be carried out by arrangement between them.

Article II

STAFF OF THE CENTRE

Without prejudice to the relevant provisions concerning the appointment of the Director, decisions in respect of all professional posts regarding appointments, duration and the nature of contracts, promotion and termination shall be taken by agreement between UNESCO and the Agency except in regard to such short-term posts as may be agreed upon. The two organizations will be guided in these matters by the rules which may be enacted within the United Nations system regarding inter-organization posts.

Article III

DETAILS OF COLLABORATION

1. Regular consultations shall take place between UNESCO and the Agency through their authorized representatives on all aspects of the Centre's activities.

2. Associate members of the Centre will be appointed and affiliated and federated institutes of the Centre will be selected by the Directors General of both organizations.

3. The Centre's publications and other documents will show in suitable form that the Centre is operated by UNESCO and the Agency as a joint programme.

Article IV

ENTRY INTO FORCE, AMENDMENT

1. This Agreement shall be signed by the Director General of UNESCO and the Director General of the Agency and be approved by the competent organs of UNESCO and the Agency. It shall enter into force at the same time as the tripartite agreement between UNESCO, the Agency and the Government of the Republic of Italy.

2. UNESCO and the Agency shall, at the request of either of them, consult about amending this Agreement.

For the International Atomic Energy Agency:

(Signed) Hans BLIX
Vienna, 15 March 1993

For the United Nations Educational, Scientific and Cultural Organization:

(Signed) Frederico MAYOR
Paris, 19 March 1993

(*b*) Agreement between the International Atomic Energy Agency, the United Nations Educational, Scientific and Cultural Organization and the Government of Italy concerning the International Centre for Theoretical Physics at Trieste. Signed at Vienna on 15 March 1993 and at Paris on 19 March 1993[38]

Whereas the International Centre for Theoretical Physics (hereinafter referred to as the "Centre") is governed by the Agreement between the International Atomic Energy Agency and the Government of the Republic of Italy concerning the Seat of the International Centre for Theoretical Physics (hereinafter referred to as the "Seat Agreement"), which entered into force on 15 June 1968; the Agreement between the International Atomic Energy Agency and the United Nations Educational, Scientific and Cultural Organization concerning the joint operation of the International Centre for Theoretical Physics at Trieste (hereinafter referred to as the "Joint Operation Agreement"), which entered into force on 1 January 1970; and the Exchange of Letters between the International Atomic Energy Agency (hereinafter referred to as the "Agency") the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as the "Italian Government") concerning the financing of Centre signed on 11 December 1990;

Whereas pursuant to the Joint Operation Agreement the administration of the Centre is carried out by the Agency on behalf of UNESCO and itself;

Whereas the Agency and UNESCO consider that it is desirable, having regard to their respective mandates, to transfer the administration of the Centre from the Agency to UNESCO;

Whereas the Agency, UNESCO and the Italian Government desire to make permanent arrangement for the financing of the Centre;

Whereas pursuant to the foregoing it is necessary to effect consequential amendments to the Seat Agreement and to the Joint Operation Agreement;

Bearing in mind the outstanding contribution that Professor Abdus Salam, the Nobel prize winner, has made to the creation and development of the Centre;

Now, therefore, the Agency, UNESCO and the Italian Government have agreed as follows:

Article 1

SEAT AGREEMENT

UNESCO shall replace the Agency as a party to, and shall take over all rights and obligations of the Agency under the existing Seat agreement on the understanding that the relevant provisions of the Agreement on the Privileges and Immunities of the Agency shall continue to be applicable, mutatis mutan-

dis, with regard to the Centre after its transfer to UNESCO. Accordingly, the words "the Agency" are replaced as appropriate with "UNESCO" in the existing Seat Agreement.

Article 2

ORGANIZATION

The Centre shall have an organizational framework consisting of the following:

(*a*) The Steering Committee,

(*b*) The Director

(*c*) The Scientific Council

Article 3

THE STEERING COMMITTEE

1. The Steering Committee shall be composed of the following members:

(*a*) (i) One highlevel representative designated by the Director-General of UNESCO;

(ii) One highlevel representative designated by the Director-General of the Agency;

(iii) One highlevel representative designated by the Italian Government;

(*b*) Such other members as may be appointed by the Steering Committee in order to ensure appropriate representation of those countries or institutions having made particularly important contributions to or having a particular interest in the activities of the Centre;

(*c*) The Director, who shall also be ex officio Chairperson of the Steering Committee.

2. The representatives mentioned in paragraphs 1(a) and (*b*) of this article may be accompanied by experts.

3. The Chairperson of the Scientific Council shall attend meetings of the Steering Committee in an advisory capacity.

Article 4

FUNCTIONS OF THE STEERING COMMITTEE

The functions of the Steering Committee shall be:

(*a*) To formulate the general guidelines for Centre's activities, taking into account its objectives as specified in the Joint Operation Agreement;

(*b*) Subject to the budgetary appropriation by the respective competent organs, to determine:

(i) The annual level of the budget;

(ii) The level of respective contributions;

(iii) The financial plans;

(iv) How the funds available for the operation of the Centre are to be used;

(*c*) To consider the proposals of the Director for the programme, work plans, financial plans and budget proposals of the Centre and to take decisions thereon;

(*d*) To consider the annual and other reports of the Director on the activities of the Centre;

(*e*) To submit a report on the Centre's activities to UNESCO and the Agency;

(*f*) To recommend to the Director General of UNESCO the names of candidates for the post of Director of the Centre;

(*g*) To adopt its own rules of procedure, which shall include the following provisions: the Steering Committee shall normally meet twice a year; the decisions of the Steering Committee shall be taken by a two-thirds majority except in cases concerning the level of contributions, in which case decisions shall require the consent of each contributor concerned.

Article 5

THE DIRECTOR

1. The Director-General of UNESCO shall, in consultation with the Director-General of the Agency and the Italian Government, appoint from among the candidates recommended by the Steering Committee the Director of the Centre for a period of five years, renewable.

2. The Director shall be the chief academic and administrative officer of the Centre. In this capacity, the Director shall, inter alia:

(*a*) Administer the Centre;

(*b*) Prepare proposals for the general activities and work plans of the Centre taking into account the advice of the Scientific Council for submission to the Steering Committee for its approval;

(*c*) Prepare the financial plans and budget proposals of the Centre for submission to the Steering Committee for its approval;

(*d*) Execute the work programmes of the Centre and make payments within the framework of general guidelines and specific decisions adopted by the Steering Committee in accordance with the provisions of article 4.

3. The Director shall have such other functions and powers as may be prescribed by the provisions of the present Agreement, the Joint Operation Agreement, the Seat Agreement and other relevant instruments or as my be entrusted to him/her pursuant to the authority delegated to him/her by the Director-General of UNESCO.

Article 6

THE SCIENTIFIC COUNCIL

1. There shall be a Scientific Council, established on a broad geographical basis, composed of up to 12 distinguished specialists in the disciplines relevant to the Centre's activities and sitting in a personal capacity.

2. The Chairperson of the Scientific Council shall be appointed jointly by the Directors General of UNESCO and the Agency, after consultations with the Steering Committee and the Director of the Centre. He or she shall be appointed for four years and shall be eligible for reappointment.

3. The remaining members shall be appointed by the Director of the Centre after consultations with the Chairperson of the Scientific Council for four years and shall be eligible for reappointment.

4. UNESCO, the Agency and the Italian Government may send specialists in scientific programmes to attend meetings of the Scientific Council.

Article 7

FUNCTIONS OF THE SCIENTIFIC COUNCIL

1. The Council shall advise the Centre on its programmes of activity having due regard to major academic, scientific, educational and cultural trends in the world relevant to the Centre's objectives.

2. The Steering Committee and the Director may request the Scientific Council for advice on more specific issues.

3. The Council shall adopt its own rules of procedure. The Council shall normally meet once a year.

Article 8

FINANCIAL COMMITMENTS

1. UNESCO, the Agency and the Italian Government agree to contribute to the Centre's budget as specified in this article.

2. The level of contributions of UNESCO and the Agency to the Centre shall, subject to the budgetary appropriation approved by their competent organs, be not lower than that agreed in the Exchange of Letters dated 11 December 1990, augmented by the respective inflation factor employed by each organization in the calculation of its budget.

3. The Italian Government shall maintain its financial contributions to the Centre at a level not lower than that specified in the same Exchange of Letters or any higher contribution decided upon by the Steering Committee in accordance with article 4(*g*).

4. The Exchange of Letters dated 11 December 1990 shall be terminated on the date of entry into force of this Agreement.

Article 9

SPECIAL ACCOUNT

1. The funds set aside for the operation of the Centre shall consist of the allocations determined by the General Conference of UNESCO, the General Conference of the Agency, the contributions of the Italian Government and of such subventions, gifts and bequests as are allocated to it by other United Nations agencies, Governments, public or private organizations, associations or individuals.

2. Funds allocated for the operation of the Centre shall be paid into a special account to be set up by the Director-General of UNESCO, in accordance with the relevant provisions of the organization's Financial Regulations. This special account shall be operated and the Centre's budget administered in accordance with the above-mentioned provisions.

Article 10

TRANSFER OF ASSETS AND LIABILITIES

Upon the entry into force of the present Agreement, UNESCO shall take over from the Agency all assets, including property, and liabilities pertaining to the Centre, in accordance with arrangements to me made between the two Parties.

Article 11

TRANSFER OF STAFF

1. The transfer of the Agency's staff members posted at the Centre to UNESCO shall be carried out by arrangement between the two organizations, taking into account the present Agreement, the Joint Operation Agreement and, for all matters not expressly agreed between UNESCO and the Agency, the relevant provisions of the Inter-organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances, it being understood that the transfer in itself should not adversely affect the conditions of employment of the said staff members posted at the Centre, including the duration of their contracts and fringe benefits, subject to the availability of the funds for the operation of the Centre.

2. Agency staff members posted at the Centre, transferred pursuant to paragraph 1 of this article, shall be staff members of UNESCO.

3. Arrangements in respect of the contractual status of other persons, besides those referred to in paragraphs 1 and 2 of this article, posted at the Centre, such as consultants, visiting scientists, course participants and fellows, shall be agreed between the two organizations.

Article 12

JOINT OPERATION AGREEMENT

The Joint Operation Agreement shall be amended as between the Agency and UNESCO taking into account the relevant provisions of the present Agreement.

Article 13

ENTRY INTO FORCE, AMENDMENT AND DURATION

1. This Agreement shall be signed by the duly authorized representatives of the Contracting Parties.

2. The present Agreement is subject to acceptance or ratification by the competent organs of each Contracting Party. Each Contracting Party shall inform in writing and without delay the other Contracting Parties of the acceptance or ratification of the present Agreement by its competent organ.

3. The present Agreement shall enter into force upon 1 January of the year following that during which the Parties exchange notifications concerning the acceptance or ratification of the present Agreement by their respective competent organs.

4. The Agency, UNESCO and the Italian Government shall, at the request of one or more of them, consult about amending this Agreement.

5. The present Agreement may be amended by mutual consent of UNESCO, the Agency and the Italian Government.

6. This Agreement shall remain in force for an indeterminate period. However, if after the consultation with the other Contracting Parties, a Contracting Party decides to denounce this Agreement, it shall address a notification to this effect to the other Contracting Parties. The denounciation shall take effect twenty-four months after the date on which the above mentioned notification was made.

For the United Nations Educational, Scientific and Cultural Organization:

(Signed) Frederico MAYOR
Paris, 19 March 1993

For the International Atomic Energy Agency:

(Signed) Hans BLIX
Vienna, 15 March 1993

For the Government of the Republic of Italy:

(Signed) Corrado TALIANI
Vienna, 15 March 1993

(*c*) Agreement between the International Atomic Energy Agency and the Government of Barbados for the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean and the Treaty on the Non-Proliferation of Nuclear Weapons (with protocol). Signed at Vienna on 10 July 1995 and at Bridgetown on 14 August 1996[39] [40]

Whereas the Government of Barbados (hereinafter referred to as "Barbados") is a party to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean hereinafter referred to as "the Tlatelolco Treaty"), opened for signature at Mexico City on 14 February 1967;[41]

Whereas article 13 of the Tlatelolco Treaty states, inter alia, that "each Contracting Party shall negotiate multilateral or bilateral agreements with the International Atomic Energy Agency for the application of its safeguards to its nuclear activities";

Whereas Barbados is a party to the Treaty on the Non-Proliferation of Nuclear Weapons[42] (hereinafter referred to as "the Non-Proliferation Treaty"), which was opened for signature at London, Moscow and Washington on 1 July 1968 and which entered into force on 5 March 1970;

Whereas paragraph 1 of article III of the Non-Proliferation Treaty as follows:

> "Each non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance wit the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere";

Whereas the International Atomic Energy Agency (hereinafter referred to as "the Agency") is authorized, pursuant to article III of its Statute, to conclude such agreements;

Now therefore Barbados and the Agency have agreed as follows:

PART I

Article I

BASIC UNDERSTANDING

Barbados undertakes to accept safeguards, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful nuclear

activities within its territory, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

Article 2

APPLICATION OF SAFEGUARDS

The Agency shall have the right and the obligation to ensure that safeguards will be applied, in accordance with the terms of this Agreement, on all source or special fissionable material in all peaceful nuclear activities within the territory of Barbados, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices.

Article 3

COOPERATION BETWEEN BARBADOS AND THE AGENCY

Barbados and the Agency shall cooperate to facilitate the implementation of the safeguards provided for in this Agreement.

Article 4

IMPLEMENTATION OF SAFEGUARDS

The safeguards provided for in this Agreement shall be implemented in a manner designed:

(*a*) To avoid hampering the economic and technological development of Barbados or international cooperation in the field of peaceful nuclear activities, including international exchange of nuclear material;

(*b*) To avoid undue interference in Barbados's peaceful nuclear activities, and in particular in the operation of facilities; and

(*c*) To be consistent with prudent management practices required for the economic and safe conduct of nuclear activities.

Article 5

(*a*) The Agency shall take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of this Agreement.

(*b*) (*i*) The Agency shall not publish or communicate to any State, organization or person any information obtained by it in connection with the implementation of this Agreement, except that specific information relating to the implementation thereof may be given to the Board of Governors of the Agency (hereinafter referred to

as "the Board") and to such Agency staff members as require such knowledge by reason of their official duties in connection with safeguards, but only to the extent necessary for the Agency to fulfil its responsibilities in implementing this Agreement.

(ii) Summarized information on nuclear material subject to safeguards this Agreement may be published upon decision of the Board if the States directly concerned agree thereto.

Article 6

(*a*) The Agency shall, in implementing safeguards pursuant to this Agreement, take full account of technological developments in the field of safeguards, and shall make every effort to ensure optimum cost-effectiveness and the application of the principle of safeguarding effectively the flow of nuclear material subject to safeguards under this Agreement by use of instruments and other techniques at certain strategic points to the extent that present or future technology permits.

(*b*) In order to ensure optimum cost-effectiveness, use shall be made, for example, of such means as:

(i) Containment as a means of defining material balance areas for accounting purposes;

(ii) Statistical techniques and random sampling in evaluating the flow of nuclear material; and

(iii) Concentration of verification procedures on those stages in the nuclear fuel cycle involving the production, processing, use or storage of nuclear material from which nuclear weapons or other nuclear explosive devices could readily be made, and minimization of verification procedures in respect of other nuclear material, on condition that this does not hamper the Agency in applying safeguards under this Agreement.

Article 7

NATIONAL SYSTEM OF MATERIAL CONTROL

(*a*) Barbados shall establish and maintain a system of accounting for and control of all nuclear material subject to safeguards under this Agreement.

(*b*) The Agency shall apply safeguards in such a manner as to enable it to verify, in ascertaining that there has been no diversion of nuclear material from peaceful uses to nuclear weapons or other nuclear explosive devices, findings of Barbados's system. The Agency's verification shall include, inter alia, independent measurements and observations conducted by the Agency in accordance with the procedures specified in part II of this Agreement. The Agency, in its verification, shall take due account of technical effectiveness of Barbardos's system.

Article 8

PROVISION OF INFORMATION TO THE AGENCY

(*a*) In order to ensure the effective implementation of safeguards under this Agreement, Barbados shall, in accordance with the provisions set out in part II of this Agreement, provide the Agency with information concerning nuclear material subject to safeguards under this Agreement and the features of facilities relevant to safeguarding such material.

(*b*) (i) The Agency shall require only the minimum amount of information and data consistent with carrying out its responsibilities under this Agreement.

(ii) Information pertaining to facilities shall be the minimum necessary for safeguarding nuclear material subject to safeguards under this Agreement.

(*c*) If Barbados so request, the Agency shall be prepared to examine on premises of Barbados design information which Barbados regards as being of particular sensitivity. Such information need not be physically transmitted to the Agency provided that it remains readily available for further examination by the Agency on premises of Barbados.

Article 9

AGENCY INSPECTORS

(*a*) (i) The Agency shall secure the consent of Barbados to the designation of Agency inspectors to Barbados.

(ii) If Barbados, either upon proposal of a designation or at any time other time after a designation has been made, objects to the designation, the Agency shall propose to Barbados an alternative designation or designations.

(iii) If, as a result of the repeated refusal of Barbados to accept the designation of Agency inspectors, inspections to be conducted under this Agreement would be impeded, such refusal shall be considered by the Board, upon referral by the Director General of the Agency (hereinafter referred to as "the Director General"), with a view to its taking appropriate action.

(*b*) Barbados shall take the necessary steps to ensure that Agency inspectors can effectively discharge their functions under this Agreement.

(*c*) The visits and activities of Agency inspectors shall be so arranged as:

(i) To reduce to a minimum the possible inconvenience and disturbance to Barbados and to the peaceful nuclear activities inspected; and

(ii) To ensure protection of industrial secrets or any other confidential information coming to the inspectors' knowledge.

Article 10

PRIVILEGES AND IMMUNITIES

Barbados shall accord to the Agency (including its property, funds and assets) and to its inspectors and other officials performing functions under this Agreement the same privileges and immunities as those set forth in the relevant provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.

Article 11

TERMINATION OF SAFEGUARDS

Consumption or dilution of nuclear material

Safeguards shall terminate on nuclear material upon determination by the Agency that the material has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable.

Article 12

Transfer of nuclear material out of Barbados

Barbados shall give the Agency advance notification of intended transfers of nuclear material subject to safeguards under this Agreement out of Barbados, in accordance with the provisions set out in part II of this Agreement. The Agency shall terminate safeguards on nuclear material under this Agreement when the recipient State has assumed responsibility therfor, as provided for in part II of this Agreement. The Agency shall maintain records indicating each transfer and, where applicable, the reapplication of safeguards to the transferred nuclear material.

Article 13

Provisions relating to nuclear material to be used in non-nuclear activities

Where nuclear material subject to safeguards under this Agreement is to be used in non-nuclear activities, such as the production of alloys or ceramics, Barbados shall agree with the Agency, before the material is so used, on the circumstances under which the safeguards on such material may be terminated.

Article 14

NON-APPLICATION OF SAFEGUARDS TO NUCLEAR MATERIAL TO BE USED IN NON-PEACEFUL ACTIVITIES

If Barbados intends to exercise its discretion to use nuclear material which is required to be safeguarded under this Agreement in a nuclear activity which does not require the application of safeguards under this Agreement, the following procedures shall apply:

(*a*) Barbados shall inform the Agency of the activity, making it clear:

(i) That the use of the nuclear material in an non-proscribed military activity will not be in conflict with an undertaking Barbados may have given and in respect of which Agency safeguards apply, that the material will be used only in a peaceful nuclear activity; and

(ii) That during the period of non-application of safeguards the nuclear material will not be used for the production of nuclear weapons or other nuclear explosive devices;

(*b*) Barbados and the Agency shall make an arrangement so that, only while the nuclear material is in such an activity, the safeguards provided for in this Agreement will not be applied. The arrangement shall identify, to the extent possible, the period or circumstances during which safeguards will not be applied. In any event, the safeguards provided for in this Agreement shall apply again as soon as the nuclear material is reintroduced into a peaceful nuclear activity. The Agency shall be kept informed of the total quantity and composition of such unsafeguarded material in Barbados and of any export of such material; and

(*c*) Each arrangement shall be made in agreement with the Agency. Such agreement shall be given as promptly as possible and shall relate only to such matters as, inter alia, temporal and procedural provisions and reporting arrangements, but shall not involve any approval or classified knowledge of the military activity or relate to the use of the nuclear material therein.

Article 15

FINANCE

Until such time as Barbados becomes a State Member of the Agency, Barbados shall fully reimburse to the Agency the safeguards expenses which the Agency incurs under this Agreement. As from the date on which Barbados becomes a State Member of the Agency, Barbados and the Agency will bear the expenses incurred by them in implementing their respective responsibilities under this Agreement. However, in either case, if Barbados or persons under its jurisdiction incur extraordinary expenses as a result of a specific request by the Agency, the Agency shall reimburse such expenses provided that it has agreed in advance to do so. In any case the Agency shall bear the cost of any additional measuring or sampling which inspectors may request.

Article 16

THIRD-PARTY LIABILITY FOR NUCLEAR DAMAGE

Barbados shall ensure that any protection against third-party liability in respect of nuclear damage, including any insurance or other financial security, which may be available under its laws or regulations shall apply to the Agency and its officials for the purpose of the implementation of this Agreement, in the same way as that protection applies to nationals of Barbados.

Article 17

INTERNATIONAL RESPONSIBILITY

Any claim by Barbados against the Agency or by the Agency against Barbados in respect of any damage resulting from the implementation of safeguards under this Agreement, other than damage arising out of a nuclear incident, shall be settled in accordance with international law.

Article 18

MEASURES IN RELATION TO VERIFICATION OF NON-DIVERSION

If the Board, upon report of the Director General, decides that an action by Barbados is essential and urgent in order to ensure verification that nuclear material subject to safeguards under this Agreement is not diverted to nuclear weapons or other nuclear explosive devices, the Board may call upon Barbados to take the required action without delay, irrespective of whether procedures have been invoked pursuant to article 22 of this Agreement for the settlement of a dispute.

Article 19

If the Board, upon examination of relevant information reported to it by the Director General, finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under this Agreement to nuclear weapons or other nuclear explosive devices, it may make the reports provided for in paragraph C of article XII of the Statute of the Agency (hereinafter referred to as "the Statute") and may also take, where applicable, the other measures provided for in that paragraph. In taking such action the Board shall take account of the degree of assurance provided by the safeguards measures that have been applied and shall afford Barbados every reasonable opportunity to furnish the Board with any necessary reassurance.

Article 20

INTERPRETATION AND APPLICATION OF THE AGREEMENT AND SETTLEMENT OF DISPUTES

Barbados 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

Barbados 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 Barbados 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 Barbados and the Agency, shall, at the request of either, be submitted to an arbitral tribunal composed as follows: Barbados 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 Barbados or the Agency has not designated an arbitrator, either Barbados or the Agency may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within thirty days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum, and all decisions shall require the concurrence of two arbitrators. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal shall be binding on Barbados and the Agency.

Article 23

AMENDEMENT OF THE AGREEMENT

(*a*) Barbados and the Agency shall, at the request of either, consult each other on amendments to this Agreement.

(*b*) All amendments shall require the agreement of Barbados and the Agency.

(*c*) Amendments to this Agreement shall enter into force in the same conditions as entry into force of the Agreement itself.

(*d*) The Director General shall promptly inform all States Members of the Agency of any amendment to this Agreement.

Article 24

ENTRY INTO FORCE AND DURATION

This Agreement shall enter into force upon signature by the representatives of Barbados and the Agency. The Director General shall promptly inform all States Members of the Agency of the entry into force of this Agreement.

Article 25

This Agreement shall remain in force as long as Barbados is party to the Tlatelolco Treaty or the Non-Proliferation Treaty, or both.

For the Government of Barbados:	For the International Atomic Energy Agency:
(Signed) Billie A. MILLER	*(Signed)* Hans BLIX
Minister for Foreign Affairs	Director General
Bridgetown, 14 August 1996	Vienna, 10 July 1995

Safeguard Agreements were also concluded during 1996 between the International Atomic Energy Agency and the Government[43] of: Algeria, Antigua and Barbuda, Barbados, Czech Republic, Dominica, Chile, Grenada, Monaco, Nigeria, Saint Kitts and Nevis and Saint Lucia.

NOTES

[1] United Nations, Treaty Series, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).
[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.97.V.5)
[3] Came into force on 25 January 1996.
[4] Came into force on 2 February 1996.
[5] Came into force provisionally on the date of signature.
[6] Came into force on 14 February 1996.
[7] Came into force on 16 February 1996.
[8] Came into force on the date of signature
[9] See agreement 2(*b*) above.
[10] Came into force in the date of signature.
[11] Came into force on 13 May 1996.
[12] Came into force provisionally on the date of signature.
[13] Came into force on 1 June 1996.
[14] Judicial Yearbook 1994, Chapter II.A.2 (*b*)
[15] Came into force on 5 June 1996.
[16] Came into force on 26 June 1996.
[17] Came into force on 12 August 1996.
[18] Came into force on 5 September 1996.
[19] Came into force on 25 October 1996.
[20] Came into force on the date of signature.
[21] Came into force on the date of signature.
[22] Provisionally came into force on the date of signature.

[23] Provisionally came into force on the date of signature.
[24] Came into force on 21 August 1996.
[25] United Nations, Treaty Series, vol. 33, p. 261.
[26] For the list of these States, see Multilateral Treaties Deposited with the Secretary-General of the United Nations (United Nations Publication, Sales No. E.97.V.5).
[27] Came into force on the date of signature.
[28] Entered into force on the date of signature.
[29] Entered into force on 17 October 1997.
[30] Certain departures from the standard texts or amendments thereto were introduced at the request of the host Governments.
[31] Came into force on 30 April 1996 by notification, in accordance with article X.
[32] Came into force on the date of signature.
[33] Came into force on 3 October 1996.
[34] Came into force on 13 December 1996.
[35] Came into force on 1 January 1996.
[36] INFCIRC/20.
[37] INFCIRC/498.
[38] Came into force on 1 January 1996.
[39] Came into force on 14 August 1996.
[40] See also chapter III.3.12 of this yearbook.
[41] United Nations, Treaty Series, vol. 634, p. 281.
[42] INFCIRC/140.
[43] See also chapter III.B.13. of this Yearbook.

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[1]

(*a*) Comprehensive Nuclear-Test-Ban Treaty (1996)[2]

After negotiations and conclusion of a draft treaty by the Conference on Disarmament, during the period from January 1994 to August 1996, the Conference was unable to submit it to the General Assembly because of a lack of consensus. However, capitalizing on the political momentum gained in the negotiations and the heightened international expectation for the finalization of a global ban, an overwhelming majority of Member States of the Assembly adopted, on 10 September 1996,[3] a Treaty identical to that produced by the Conference. As depositary, the Secretary-General opened the Comprehensive Nuclear-Test-Ban Treaty for signature on 24 September.

(*b*) Nuclear non-proliferation and disarmament

While the long-standing objective of the Comprehensive Nuclear-Test-Ban Treaty was finally realized in 1996, there was no comparable progress in negotiations on other fronts in the nuclear field. Reductions in the arsenals of the two major Powers continued on the basis of existing agreements, while START I[4] remained unratified by the Russian Federation and no new reduction talks got under way. Steps towards dismantlement and force reduction were taken by France and the United Kingdom of Great Britain and Northern Ireland and by the end of the year the territories of Belarus, Kazakhstan and Ukraine were free of nuclear weapons. Significant steps were taken by IAEA to strengthen its safeguards system, and the Group of Seven major industrialized countries and the Russia Federation affirmed the necessity of ensuring the safety and security of nuclear material and controlling nuclear trafficking.

Responding to the question "Is the threat or use of nuclear weapons in any circumstance permitted under international law?" posed by General Assembly in its resolution 49/75K of 15 December 1994, the International Court of Justice issued its advisory opinion on the legality of the threat or use of nuclear weapons on 8 July 1996.[5]

The General Assembly took action on 17 draft resolutions in the area of nuclear non-proliferation and disarmament, which if adopted on the recommendation of the First Committee, on 10 December 1996. Among them was resolutions was 51/45A, entitled "Treaty on the Non-Proliferation of Nuclear Weapons:[6] 2000 Review Conference of the Parties to the Treaty on the Non-Prolifera-

tion of Nuclear Weapons and its Preparatory Committee".[7] In the resolution, the Assembly recalled the agreement was recalled whereby Treaty Review Conferences should continue to be held every five years and that, whereby accordingly, the next Review Conference should be held in 2000.

The General Assembly adopted the two resolutions that pertained to existing nuclear-weapon-free zones: Latin America and the Caribbean, and Africa. It also adopted traditional proposals for the establishment of such zones in the regions of the Middle East and South Asia. In addition, it adopted a resolution regarding a nuclear-weapon-free southern hemisphere.

Also, on 10 December 1995, on the recommendation of the First Committee, resolution 51/45 J, entitled, "Prohibition of the dumping of radioactive wastes". During the discussion on the resolution, the United States of America reiterated its position that the First Committee, which dealt with disarmament and related security issues, was not the appropriate forum for dealing with what was essentially an environmental issue, and Australia had attempted without success to have a reference to the Waigani Convention[8] inserted in the preamble to the resolution.

(*c*) Chemical and biological weapons

The eradication of the two categories of weapons of mass destruction was provided for in the 1971 Biological Weapons Convention[9] and the 1992 Chemical Weapons Convention[10] and the United Nations has sought to promote universal participation in, and compliance with them. In 1996, work was carried out to strengthen the Biological Weapons Convention through the elaboration of verification and confidence, building and transparency measures, and efforts were undertaken to prepare for the first session of the Conference of the States parties to the Chemical Weapons Convention. At the same time, under the authority of the Security Council, the United Nations Special Commission (UNSCOM) continued its efforts to identify and dispose of Iraq's biological and chemical weapons, and to monitor its compliance with its obligation not to acquire proscribed weapons and capabilities.

The General Assembly on 10 December 1996, adopted three resolutions within the context of biological and chemical weapons. One of them, resolution 51/54 P[11] concerned measures to uphold the authority of the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and Bacteriological Methods of Warfare.[12]

(*d*) Conventional weapons: global and regional approaches

Issues of conventional weapons and regional security figured prominently in 1996. In the Disarmament Commission, Member States agreed upon a balanced set of guidelines for arms transfers was upheld with the issuance of the fourth annual Register of Conventional Arms,[13] and an effort was launched to make the standardized reporting instrument for military budgets more accessible.

The General Assembly adopted eight resolutions in the area of conventional disarmament: two concerning transparency and objective information, one on illicit trafficking, one on practical disarmament measures and four concerning regional disarmament per se.

Regarding the Convention on Certain Conventional Weapons,[14] the General Assembly, on the recommendation of the First Committee, adopted on 10 December 1996, without a vote resolution 51/49, commending the amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II), and the Protocol on Blinding Laser Weapons (Protocol IV) to all States and called upon States parties to consent to be bound there to with a view to the early entry into force of the Protocols. On the same day the Assembly also adopted by a recorded vote of 155 to none, with 10 abstentions, resolution 51/45 S, entitled "An international agreement to ban anti-personnel landmines", in which, it urged States to pursue an effective, legally binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines.

2. OTHER POLITICAL AND SECURITY QUESTIONS

(*a*) Membership in the United Nations

As at the end of 1996, the number of Member States remained at 185.

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

The Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space held its thirty-fifth session at the Unite Nations Office at Vienna form 18 to 28 March 1996.[15]

Regarding the agenda item on the "Question of early review and possible revision of the principles relevant to the uses of nuclear power sources in outer space", the Subcommittee noted that the item had been considered by the Scientific and Technical Subcommittee in 1996, which had agreed that, revision of the Principles was not warranted at the current stage. The Legal Subcommittee agreed with that assessment and decided not to re-establish its Working Group at the current session, but to retain it on its agenda to give delegations an opportunity to discuss it in plenary meetings.

The Legal Subcommittee re-established its Working Group on the agenda item "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union". The Subcommittee endorsed the recommendations of the Working Group that the Secretariat, inter alia, should prepare for the thirty-sixth session of the Legal Subcommittee a comprehensive analysis of the replies to the questionnaire on possible legal issues with regard to aerospace objects, in order to assist the Working Group in its deliberations, and that the Secretariat, in cooperation with the ITU secretariat, should provide, for the next session of the Working Group, an analysis of the compatibility of the approach contained in working paper A/AC.105/C.2/L.200 and Corr. 1 with the existing rules and procedures of ITU relating to the use of the geostationary orbit.

The Legal Subcommittee also re-established its Working Group on the agenda item entitled "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", which submitted a working paper[16] to the Subcommittee.

The Committee on the Peaceful Uses of Outer Space, at its thirty-ninth session held at the United Nations Office at Vienna from 3 to 14 June 1996, took note of the report of the Legal Subcommittee on the work of its thirty-fifth session[17] and made a number of recommendations concerning the work of the Subcommittee, including the adoption of the declaration on international cooperation in the exploration and uses of outer space (see below) and the consideration of possible items for its agenda, e.g., "Review of the status of the five international legal instruments on outer space", "Review of existing norms of international law applicable to space debris" and "Comparison of the norms of space law and those of international environmental law".

Consideration by the General Assembly

On the recommendation of the Special Political and Decolonization Committee (Fourth Committee), the General Assembly on 13 December 1996 adopted resolution 51/123 taking note of the report of the Secretary-General[18] on the implementation of the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space[19] endorsed the report of the Committee on the Peaceful Uses of Outer Space on the work of its thirty-ninth session[20] and invited States that had not yet become parties to the international treaties governing the uses of outer space[21] to give consideration to ratifying or acceding to them. (UNISPACE II)

On the same date, the General Assembly adopted resolution 51/122, by which it adopted the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the interest of All States, Taking into Particular Account the Needs of Developing Countries, which reads as follows:

Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries

1. International cooperation in the exploration and use of outer space for peaceful purposes (hereinafter international cooperation) shall be conducted in accordance with the provisions of international law, including the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. It shall be carried out for the benefit and in the interest of all States, irrespective if their degree of economic, social or scientific and technological development, and shall be the province of all mankind. Particular account should be taken of the needs of developing countries.

2. States are free to determine all aspects of their participation in international cooperation in the exploration and use of outer space on an equitable and mutually acceptable basis. Contractual terms in such cooperative ventures should be fair and reasonable and they should be in full compliance with the legitimate rights and interests of the parties concerned, as, for example, with intellectual property rights.

3. All States, particularly those with relevant space capabilities and with programmes for the exploration and use of outer space, should contribute to promoting and fostering international cooperation on an equitable and mutually acceptable basis. In this context, particular attention should be given to the benefit and the interests of developing countries and countries with incipient space programmes stemming from such international cooperation conducted with countries with more advanced space capabilities.

4. International cooperation should be conducted in the modes that are considered most effective and appropriate by the countries concerned, including inter alia, governmental and non-governmental; commercial and non-commercial; global, multilateral, regional or bilateral; and international cooperation among countries in all levels of development.

5. International cooperation, while taking into particular account the needs of developing countries, should aim, inter alia, at the following goals, considering their need for technical assistance and rational and efficient allocation of financial and technical resources:

(*a*) Promoting the development of space science and technology and of its applications;

(*b*) Fostering the development of relevant and appropriate space capabilities in interested States;

(*c*) Facilitating the exchange of expertise and technology among States on a mutually acceptable basis.

6. National and international agencies, research institutions, organizations for development aid, and developed and developing countries alike should consider the appropriate use of space applications and the potential of international cooperation for reaching tier development space.

7. The Committee on the Peaceful Uses of Outer Space should be strengthened in its role, among others, as a forum for the exchange of information on national and international activities in the field of international cooperation in the exploration and use of outer space.

8. All States should be encouraged to contribute to the United Nations Programme on Space Applications and to other initiatives in the field of international cooperation in accordance with their space capabilities and their participation in the exploration and use of outer space.

(*c*) Comprehensive review of the whole question of peacekeeping operations in all their aspects

In its resolution 51/136 of 13 December 1996, adopted on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), the General Assembly taking note of the report of the Secretary-General on the work of the Organization[22] and welcoming the statement of 28 March 1996 by the President of the Security Council on the arrangements for improved consultation and exchange of information with troop-contributing countries[23], welcomed the report of the Special Committee on Peacekeeping operations[24] and endorsed the proposals, recommendations and conclusions of the Special Committee contained in paragraphs 29 to 85 of the report.

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

(*a*) Environmental questions

At the fifty-first session, the General Assembly adopted a number of resolutions concerning the environment, including resolution 51/176 of 16 December 1996, on the implementation of the Programme of Action of the International Conference in Population and Development. In the resolutions the Assembly, having considered the report of the Secretary-General on the implementation of resolution 50/124[25] and noting the action taken so far by Governments and the international community to implement the Programme of Action,[26] reiterated that Governments should continue to commit themselves at the highest political level to achieving goals and objectives and to take the lead role in coordinating the implementation, monitoring and evaluation of the follow-up actions at the national level, and emphasized that international cooperation in the field of population and development was essential for the implementation of the recommendations adopted at the Conference, and in that context called upon the international community to continue to provide, both bilaterally and multilaterally adequate and substantial support and assistance for population and development activities, including through the United Nations Population Fund, other organs and organizations of the United Nations system and the specialized agencies that would be involved in the implementation, at all levels, of the Programme of Action.

On the same date, on the recommendation of the Second Committee, the General Assembly adopted resolution 51/181 on the special session for the purpose of an overall review and appraisal of the implementation of Agenda 21.[27] Recalling its resolution 47/190 of 22 December 1992, in which it had decided to convene, not later than 1997, a special session for the purpose of an overall review and appraisal of the implementation of Agenda 21, the Assembly strongly reaffirmed that the special session would be undertaken on the basis of and full respect of the Rio Declaration on Environment and Development.[28] Furthermore, taking note of the progress report of the Secretary-General on the state of preparations for the 1997 special session,[29] the Assembly decided to convene the special session envisaged in its resolution 47/190 for a duration of one week, from 23 to 27 June 1997, at the highest political level of participation. By the same resolution, the Assembly stressed that there should be no attempt to renegotiate Agenda 21, the Rio Declaration on Environment and Development or the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests.[30]

Also on the recommendation of the Second Committee, the General Assembly adopted resolution 51/182 of 16 December 1996 on the 1992 Convention on Biological Diversity.[31] In the resolution, the Assembly welcomed the results of the second meeting of the Conference of the Parties to the Convention,[32] and in that context reaffirmed the need to take concrete action to fulfil the objectives of the Convention and take note of the Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity,[33] which proposed a framework for global action. The Assembly also took note of the second meeting of the Convention's Subsidiary Body on Scientific, Techni-

cal and Technological Advice, held at the seat of the secretariat of the Convention at Montreal, Canada, from 2 to 6 September 1996, and of the work carried out at the first meeting of the Open-ended Ad Hoc Group on Biosafety held at Aarhus, Denmark, from 22 to 26 July 1996.

The General Assembly, by its resolution 51/180 of 16 December 1996, adopted on the recommendation of the Second Committee, welcomed the fact that, in conformity with article 36, paragraph 1, of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa,[34] the Convention would enter into force on 26 December 1996, and called upon more countries to take appropriate action for the ratification, acceptance or approval of or accession to the Convention.

By its resolution 51/185 of 16 December 1996, the General Assembly took note of the report of the Secretary-General on the International Decade for Natural Disaster Reduction,[35] and by its resolution 51/189 of the same date, the Assembly endorsed the Washington Declaration on Protection of the Marine Environment from Land Based Activities[36] and the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities.[37]

Furthermore, in its resolution 51/184 of 16 December 1996, on the protection of global climate for present and future generations of mankind, the General Assembly welcomed the achievements of the second session of the Conference of the Parties to the 1992 United Nations its Framework Convention on Climate Change.[38] The Assembly also recalled that at its second session the Conference of the Parties had taken note without formal adoption of the General Ministerial Declaration[39], which had received majority support among ministers and other heads of delegations attending the Conference, and which, inter alia, called for acceleration of negotiations on the text of a legally binding protocol or another legal instrument to be completed in due time for adoption at the third session of the Conference of the Parties.

(*b*) Corruption and bribery

The General Assembly, on the recommendation of the Second Committee, adopted resolution 51/191 of 16 December 1996, in which it adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and requested the Economic and Social Council and its subsidiary bodies, in particular the Commission on Crime Prevention and Criminal Justice, to examine ways, including through legally binding international instruments, to promote the criminalization of corruption and bribery in international commercial transactions. The text of the Declaration reads as follows:

United Nations Declaration against Corruption and Bribery in International Commercial Transactions

The General Assembly,

Convinced that a stable and transparent environment for international commercial transactions in all countries is essential for the mobilization of investment, finance, technology, skills and other important resources across national borders, in order, inter alia, to promote economic and social development and environmental protection,

Recognizing the need to promote social responsibility and appropriate standards of ethics on the part of private and public corporations, including transnational corporations, and individuals engaged in international commercial transactions, inter alia, through observance of the laws and regulations of the countries in which they conduct business, and taking into account the impact of their activities on economic and social development and environmental protection,

Recognizing also that effective efforts at all levels to combat and avoid corruption and bribery in all countries are essential elements of an improved international business environment, that they enhance fairness and competitiveness in international commercial transactions and form a critical part of promoting transparent and accountable governance, economic and social development and environmental protection in all countries, and that such efforts are especially pressing in the increasingly competitive globalized international economy,

Solemnly proclaims the United Nations Declaration against Corruption and Bribery in International Commercial Transactions as set out below.

Member States, individually and through international and regional organizations, taking actions subject to each State's own constitution and fundamental legal principles and adopted pursuant to national laws and procedures, commit themselves:

1. To take effective and concrete action to combat all forms of corruption, bribery and related illicit practices in international commercial transactions, in particular to pursue effective enforcement of existing laws prohibiting bribery in international commercial transactions, to encourage the adoption of laws for those purposes where they do not exist, and to call upon private and public corporations, including transnational corporations, and individuals within their jurisdiction engaged in international commercial transactions to promote the objectives of the present Declaration;

2. To criminalize such bribery of foreign public officials in an effective and coordinated manner, but without in any way precluding, impeding or delaying international, regional or national actions to further the implementation of the present Declaration;

3. Bribery may include, inter alia, the following elements:

(*a*) The offer, promise or giving of any payment, gift or other advantage, directly or indirectly, by any private or public corporation, including transnational corporation, or individual from a State to any public official or elected representative of another country as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction;

(*b*) The soliciting, demanding, accepting or receiving, directly or indirectly, by any public official or elected representative of a State from any private or public corporation, including a transnational corporation, or individual form another country of any payment, gift or other advantage, as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction;

4. To deny, in countries that do not already do so, the tax deductibility of bribes paid by any private or public corporation or individual of a State to any public official or elected representative of another country and, to that end, to examine their respective modalities for doing so;

5. To develop or maintain accounting standards and practices that improve the transparency of international commercial transactions, and that encourage private and public corporations, including transnational corporations, and individuals engaged in international commercial transactions to avoid and combat corruption, bribery and related illicit practices;

6. To develop or to encourage the development, as appropriate, of business codes, standards or best practices that prohibit corruption, bribery and related illicit practices in international commercial transactions;

7. To examine establishing illicit enrichment by public officials or elected representatives as an offence;

8. To cooperate and afford one another the greatest possible assistance in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions. Mutual assistance shall include, as far as permitted under national laws or as provided for in bilateral treaties or other applicable arrangements of the affected countries, and taking into account the need for confidentiality as appropriate:

(*a*) Production of documents and other information, taking to evidence and service of documents relevant to criminal investigations and other legal proceedings;

(*b*) Notice of the initiation and outcome of criminal proceedings concerning bribery in international commercial transactions to other States that may have jurisdiction over the same offence;

(*c*) Extradition proceedings where and as appropriate;

9. To take appropriate action to enhance cooperation to facilitate access to documents and records about transactions and about identities of persons engaged in bribery in international commercial transactions;

10. To ensure that bank secrecy provisions do not impede or hinder criminal investigations or other legal proceedings relating to corruption, bribery or related illicit practices in international commercial transactions, and that full cooperation is extended to Governments that seek information on such transactions;

11. Actions taken in furtherance of the present Declaration shall respect fully the national sovereignty and territorial jurisdiction of Member States, as well as the rights and obligations of Member States under existing treaties and international law, and shall be consistent with human rights and fundamental freedom;

12. Member States agree that actions taken by them to establish jurisdiction over acts of bribery of foreign public officials in international commercial transactions shall be consistent with the principles of international law regarding the extraterritorial application of a State's laws.

Furthermore, the General Assembly, on the recommendation of the Third Committee, adopted resolution 51/59 of 12 December 1996, concerning action against corruption in which the Assembly took note of the report of the Secretary-General on action against corruption;40 submitted to the Commission Crime Prevention and Criminal Justice at of its forth session, and adopted the International Code of Conduct for Public Officials, which reads as follows:

International Code of Conduct for Public Officials

I. GENERAL PRINCIPLES

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be in the public interests of their country as expressed through the democratic institutions of government.

2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.

3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

II. CONFLICT OF INTEREST AND DISQUALIFICATION

4. Public officials shall not use their official authority for the improper advancement of their own or their family's personal or financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.

5. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.

6. Public officials shall at no time improperly use public moneys, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.

7. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

III. DISCLOSURE OF ASSETS

8. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependants.

IV. ACCEPTANCE OF GIFTS OR OTHER FAVOURS

9. Public officials shall not solicit or receive directly or indirectly any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement.

V. CONFIDENTIAL INFORMATION

10. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

VI. POLITICAL ACTIVITY

11. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties.

(c) Other issues concerning crime prevention and criminal justice

The General Assembly, on the recommendation of the Third Committee, adopted resolution 51/60 of 12 December 1996, in which it approved the United Nations Declaration on Crime and Public Security, which reads as follows:

United Nations Declaration on Crime and Public Security

The General Assembly,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations,[41] the Declaration on Measures to Eliminate International Terrorism[42] and the Naples Political Declaration and Global Action Plan against Organized Transnational Crime[43],

Solemnly proclaims the following United Nations Declaration on Crime and Public Security:

Article 1

Member States shall seek to protect the security and well-being of their citizens and all persons within their jurisdiction by taking effective national measures to combat serious transnational crime, including organized crime, illicit drug and arms trafficking in persons, terrorist crimes and the laundering of proceeds from serious crimes, and shall pledge their mutual cooperation in those efforts.

Article 2

Member States shall promote bilateral, regional, multilateral and global law enforcement cooperation and assistance, including, as appropriate, mutual legal assistance arrangements, to facilitate the detection, apprehension and prosecution of those who commit or are otherwise responsible for serious transnational crimes and to ensure that law enforcement and other competent authorities can cooperate effectively on an international basis.

Article 3

Member States shall take measures to prevent support for and operations of criminal organizations in their national territories. Member States shall, to the fullest possible extent, provide for effective extradition or prosecution of those who engage in serious transnational crimes in order that they find no safe haven.

Article 4

Mutual cooperation and assistance in matters concerning serious transnational crime shall also include, as appropriate, the strengthening of systems for the sharing of information among Member States and the provision of bilateral and multilateral technical assistance to Member States by utilizing training, exchange programmes and law enforcement training academies and criminal justice institutes at the international level.

Article 5

Member States that have not yet done so are urged to become parties as soon as possible to the principal existing international treaties relating to various aspects of the problem of international terrorism. States parties shall effectively implement their provisions in order to fight against terrorist crimes. Member States shall also take measures to implement General Assembly resolution 49/60 of 9 December 1994, on measures to eliminate international terrorism, and the Declaration on Measures to Eliminate International Terrorism contained in the annex to that resolution.

Article 6

Member States that have not yet done so are urged to become parties to the international drug control conventions as soon as possible. States parties shall effectively implement the provisions of the Single Convention on Narcotic Drugs of 196145 as amended by the 1972 Protocol45 the Convention on Psychotropic Substances of 197146 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 198847 Member States specifically reaffirm that, on the basis of shared responsibility, they shall take all necessary preventive and enforcement measures to eliminate the illicit production of, trafficking in and distribution and consumption of narcotic drugs and psychotropic substances, including measures to facilitate the fight against those criminals involved in this type of transnational organized crime.

Article 7

Member States shall take measures within their national jurisdiction to improve their ability to detect and interdict the movement across borders of those who engage in serious transnational crime, as well as the instrumentalities of such crime, and shall take effective specific measures to protect their territorial boundaries, such as:

(*a*) Adopting effective controls on explosives and against illicit trafficking by criminals in certain materials and their components that are specifically designed for use in manufacturing nuclear, biological or chemical weapons and, in order to lessen risks arising form such trafficking, by becoming parties to and fully implementing all relevant international treaties relating to weapons of mass destruction;

(*b*) Strengthening supervision of passport issuance and enhaneement of protection against tampering and counterfeiting;

(*c*) Strengthening enforcement of regulations on illicit transitional trafficking in firearms, with a view to both suppressing the use of firearms in criminal activities and reducing the likelihood of fuelling deadly conflict;

(*d*) Coordinating measures and exchanging information to combat the organized criminal smuggling of persons across national borders.

Article 8

To combat further the transnational flow of the proceeds of crime, Member States agree to adopt measures, as appropriate, to combat the concealment or disguise of the true origin of proceeds of serious transnational crime and the intentional conversion or transfer of such proceeds for that purpose. Member States agree to require adequate record-keeping by financial and related institutions and, as appropriate, the reporting of suspicious transactions and to ensure effective laws and procedures to permit the seizure and forfeiture of the proceeds of serious transnational crime. Member States recognize the need to limit the application of bank secrecy laws, if any, with respect to criminal operations and to obtain the cooperation of the financial institutions in detecting these and any other operations that may used for the purpose of money-laundering.

Article 9

Member States agree to take steps to strengthen the overall professionalism of their criminal justice, law enforcement and victim assistance systems and relevant regulatory authorities thorough measures such as training, resource allocation and arrangements for technical assistance with other States and to promote the involvement of all elements of society in combating and preventing serious transnational crime.

Article 10

Member States agree to combat and prohibit corruption and bribery, which undermine the legal foundations of civil society, by enforcing applicable domestic laws against such activity. For this purpose, Member States also agree to consider developing concerted measures for international cooperation to curb corrupt practices, as well as developing technical expertise to prevent and control corruption.

Article 11

Actions taken in furtherance of the present Declaration shall fully respect the national sovereignty and territorial jurisdiction of Member States, as well as the rights and obligations of Member States under existing treaties and international law, and shall be consistent with human rights and fundamental freedoms as recognized by the United Nations.

Also, on the recommendation of the Third Committee, the General Assembly adopted resolution 51/62 of 12 December 1996, in which it condemned the practices of smuggling aliens in violation of international and national law or other agreements between States and without regard for the safety, well-being and human rights of the migrants. Furthermore, the Assembly requested the Commission on Crime Prevention and Criminal Justice to consider giving attention to the question of the smuggling of aliens at its sixth session, to be held in 1997, in order to encourage international cooperation to address this problem within the framework of its mandate.

In its resolution 51/63 of 12 December 1996, concerning the strengthening of the United Nations Crime Prevention and Criminal Justice Programme, adopted on the recommendation of the Third Committee, the General Assembly took note of the report of the Secretary-General on the progress made in the implementation of General Assembly resolutions 50/1[45] and 50/1[46] of 21 December 1995.[48] The Assembly also welcomed the upgrading of the Crime Prevention and Criminal Justice Branch of the Secretariat to a division, and requested the Secretary-General to strengthen further the Programme by providing it with the resources necessary for the full implementation of its mandate, including follow-up action to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime[49] and to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.[50]

On the same date, the General Assembly, also on the recommendation of the Third Committee, adopted resolution 51/120 in which it requested the Secretary-General invite all States to submit their views on the question of the elaboration of an international convention against organized transnational crime, and requested the Commission on Crime Prevention and Criminal Justice to consider the question, as a matter of priority taking into account the views of all States on the matter.

Finally, by its resolution 51/1 of 15 October 1996, adopted without reference to a Main Committee, the General Assembly decided to invite the International Criminal Police Organization INTERPOL to participate in the sessions and the work of the Assembly in the capacity of observer.

(*d*) International drug control

During the courts of 1996, three more States became parties to the 1961 Single Convention on Narcotic Drugs,[51] bringing the total number of parties to 138; seven more States became Committee, the General Assembly decided to invite the International Criminal Police Organization-INTERPOL to participate in the sessions and the work of the Assembly in the capacity of observer.

Consideration by the General Assembly

In its resolution 51/64 of 12 December 1996, adopted on the recommendation of the Third Committee, the General Assembly reaffirming and stressing the need for increased efforts to implement the comprehensive framework for international cooperation in drug control provide by the existing drug control conventions, the Declaration of the International Conference on Drug Abuse and Illicit Trafficking[56] and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control[57] the Political Declaration and Global

Programme of Action[58] adopted by the General Assembly at its seventeenth special session devoted to the question of international cooperation against illicit production, supply, demand, trafficking and distribution of narcotic and psychotropic substances, the Declaration adopted by the World Ministerial Summit to Reduce the Demand for Drugs and to Combat the Cocaine Threat,[59] the United Nations System—wide Action Plan on Drug Abuse Control,[60] the Naples Political Declaration and Global Action Plan against Organized Transnational Crime[61] and other relevant international standards, reaffirmed that the fight against drug abuse and illicit trafficking must be carried out in full conformity with the purposes and principles enshrined in the Charter of the United Nations and international law, in particular respect for the sovereignty and territorial integrity of States and the non-use of force or the threat of force in international relations. In the same resolution, the Assembly took note of the reports of the Secretary-General submitted under the item entitled "International drug control".[62]

(*e*) Human rights questions

(1) *Status and implementation of international instruments*

(i) *International Covenants on Human Rights*

In 1996, two more States became parties to the International Covenant on Economic Social and Cultural Rights of 1966,[63] bringing the total number of States parties to 135; three more States became parties to the International Covenant on Civil and Political Rights of 1966,[64] bringing the total to 136; two more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights of 1966,[65] bringing the total to 89; and the number of States parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, of 1989[66], remained at 29.

(ii) *International Convention on the Elimination of All Forms of Racial Discrimination of 1966*[67]

In 1996, two more States became parties to the International Convention, bringing the total number of States parties to 148.

The General Assembly, by its resolution 51/80 of 12 December 1996, adopted on the recommendation of the Third Committee, took note of the report of the Committee in the Elimination of Racial Discrimination on the work of the forty-eighth and forty-ninth sessions[68] and the report of the Secretary-General on the status of the International Convention.[69]

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973*[70].

In 1996, one State became a party to the International Convention, bringing the total number of States parties to 100.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women of 1979*[71]

In 1996, three more States became parties to the Convention, bringing the total number of States parties to 154.

In its resolution 51/68 of 12 December 1996, adopted on the recommendation of the Third Committee the General Assembly, recalling the Vienna Declaration and Programme of Action 1993,[72] in which the Conference reaffirmed that the human rights of women and the girl child were an inalienable, integral and indivisible part of universal human rights, and having considered the reports of the Committee on the Elimination of Discrimination against Women on its fourteenth[73] and fifteenth[74] sessions, welcomed the report of the Open-ended Working Group on the Elaboration of a Draft Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.[75]

The General Assembly, on 12 December 1996, in its decision 51/417, took note of the report of the Secretary-General on the status of the Convention.[76]

(v) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984*[77]

In 1996, eight more States became parties to the Convention, bringing the total number of States parties to 101.

The General Assembly, by its resolution 51/86 of 12 December 1996, adopted on the recommendation of the Third Committee, welcomed the report of the Committee against Torture,[78] submitted in accordance with the provision of article 24 of the Convention.

(vi) *Convention on the Rights of the Child of 1989*[79]

In 1996, three more States became parties to the Convention, bringing the total number of States parties to 188.

(vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990*[80]

In 1996, two more States became parties to the International Convention, bringing the total number of States parties to eight.

In its resolution 51/85 of 12 December 1996, adopted on the recommendation of the Third Committee, the General Assembly bearing in mind the principles and norms established within the framework of the International Labour Organization and the importance of the work done in connection with migrant workers and members of their families in other specialized agencies and in various organs of the United Nations, took note of the report of the Secretary-General.[81]

(2) *Report of the United Nations High Commissioner for Human Rights*

The General Assembly, by its resolution 51/119 of 12 December 1996, adopted on the recommendation of the Third Committee, took note of the report of the United Nations High Commissioner for Human Rights[82] on the effective promotion and protection of all human rights.

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

In its resolution 51/87 of 12 December 1996, entitled "Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights adopted on the recommendation of the Third Committee, the General Assembly reaffirming that the full and effective implementation of United Nations human rights instruments was of major importance to the efforts of the Organization, pursuant to the Charter of the United Nations and the Universal Declaration of Human Rights[83] to promote universal respect for and observance of human rights and fundamental freedoms, and taking note of the report of the Secretary-General,[84] welcomed the report of the persons chairing the human rights treaty bodies on their seventh meeting, held at Geneva from 16 to 20 September 1996,[85] and took note of their conclusions and recommendations.

(4) *Strengthening the rule of law*

The General Assembly, by its resolution 51/96 of 12 December 1996, adopted on the recommendation of the Third Committee, took note with satisfaction of the report of the Secretary-General[86] and took further note of the proposals contained 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 which upheld the rule of law.

(5) *Extrajudicial summary or arbitrary executions*

In its resolution 51/92 of 12 December 1996, adopted on the recommendation of the Third Committee, the General Assembly demanded all Governments ensure that the practice of such executions was brought to an end; reiterated the obligation of all Governments to conduct exhaustive and impartial investigations into all suspected cased of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, to grant adequate compensation to the victims or their families and to adopt all necessary measures to prevent the recurrence of such executions; and took note of the interim report of the Special Rapporteur on the subject.[87]

(*f*) Office of the United Nations High Commissioner for Refugees

Status of international instruments

During 1996, three more States became parties to the Convention Relating to the Status of Refugees of 1951,[88] bringing the total number of States parties to 128; and two more States became parties to the Protocol Relating to the Status of Refugees of 1967,[89] bringing the total number of States parties to 128.

Two more States became parties to the Convention Relating to the Status of Stateless Persons of 1954[9] bringing the total number of States parties to 43; and three more States became parties to the Convention on the Reduction of Statelessness of 1961[9] bringing the total number of States parties to 19.

Consideration by the General Assembly

At its fiftieth session, the in its resolution 51/75 of 12 December 1996, adopted on the recommendation of the Third Committee, the General Assembly having considered the report of the United Nations Commissioner for Refugees on the activities of her Office[92] and the report of the Executive Committee of Programme of the High Commissioner on the work of its forty-seventh session,[93] strongly reaffirmed the fundamental importance and the purely humanitarian and non-political character of the function of United Nations High Commissioner for Refugees of providing international protection to refugees and seeking permanent solutions to the problem of refugees and the need for States to cooperate fully with the Office in order to facilitate the effective exercise of that function; and urged States to ensure access, consistent with relevant international and regional instruments, for all asylum-seekers to fair and efficient procedures for the determination of refugee status and the granting of asylum to eligible persons.

The General Assembly on 12 December 1996 adopted several additional resolutions concerning refugees: In resolution 51/70 the Assembly took note of the report of the Secretary-General on the follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States.[94] In resolution 51/71, it took note of the report of the Secretary-General on assistance to refugees, returnees and displaced persons in Africa,[95] and reiterated that the Plan of Action adopted by the 1995 Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Region as endorsed by the General Assembly in its resolution 50/149 of 21 December 1995 continued to be a viable framework for the resolution of the refugee and humanitarian problems in that region. Finally, in resolution 51/73, the Assembly took note of the report of the Secretary-General on assistance to unaccompanied refugee minors,[96] and conscious of the importance of family unity, called upon UNHCR to incorporate in its programmes policies aimed at preventing refugee family separation.

(g) New international humanitarian order

In its resolution 51/74 of 12 December 1996, adopted on the recommendation of the Third Committee, the General Assembly taking note oft the report of the Secretary-General[97] containing comments and views of Governments, the specialized agencies and non-governmental organizations regarding the promotion of a new international humanitarian order, requested Governments to make available to the Secretary-General, on a voluntary basis, information and expertise on humanitarian issues of special concern to them, in order to identify opportunities for future action.

(*h*) International ad hoc criminal Tribunals

At the fiftieth session, the General Assembly adopted decisions in which it took note of the reports of both 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[98] and 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 1 January and 31 December 1994.[99]

(*i*) Report of the World Commission on Culture and Development

In its resolution 51/179 of 16 December 1996, adopted on the recommendation of the Second Committee, the General Assembly noting that the Director-General of UNESCO had sent the report of the World Commission on Culture and Development entitled Our Creative Diversity[100] to the States of members of UNESCO for their comments, as well as to many non-governmental and academic bodies, requested the Secretary-General, in cooperation with the Director-General of UNESCO to stimulate further international debate on culture and development.

4. LAW OF THE SEA

Status of the United Nations Convention on the Law of the Sea of 1982[101]

During 1996, 26 more States became parties to the Law of the Sea Convention, bringing the total number of States parties to 110.

Report of the Secretary General[102]

The 1996 report of the Secretary-General on the agenda item entitled "law of the sea" included information on the Convention and the implementing agreements; meetings of States parties to the Convention; actions taken by States; actions taken by the Secretary-General; developments concerning the institutions created by the Convention (International Seabed Authority, International Tribunal for the Law of the Sea and Commission on the Limits of the Continental Shelf); legal developments under related treaties and instruments and related actions of international organizations and bodies; maritime disputes and conflicts; crimes at sea; development of non-living marine resources; marine science and technology; and technical cooperation and capacity-building in the law of the sea and ocean affairs.

The International Tribunal for the Law of the Sea was constituted with the election of its 21 members, and its initial budget was approved by the States parties. The judges held their first executive session from 1 to 30 October 1996 and were sworn in on 18 October at an inaugural session of the Tribunal at its seat at Hamburg, Germany.

Consideration by the General Assembly

In its resolution 51/34 of 9 December 1996, adopted without reference to a Main Committee, the General Assembly conscious of the strategic importance of the Convention as a framework for national, regional and global action in the marine sector, as recognized also by the United Nations Conference on Environment and Development in chapter 17 of Agenda 21,[103] noting the recommendation of the Commission on Sustainable Development,[104] endorsed by the Economic and Social Council,[105] concerning international cooperation and coordination in the implementation of chapter 17 of Agenda 21; and noting also the Washington Declaration and the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities,[106] called upon all States that had not done so to become parties to the United Nations Convention on the Law of the Sea and to ratify, confirm formally or accede to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982[107] in order to achieve the goal of universal participation; and also called upon States to harmonize their national legislation with the provisions of the Convention, to ensure the consistent application of those provisions and to ensure also that any declarations or statements that they had made or would make when signing ratifying or acceding were in conformity with the Convention.

On the same date, also without reference to a Main Committee, the General Assembly adopted resolution 51/35 on the Agreement for the Implementation of the Provision of the United Nations Convention on the Law of the Sea of 10 December 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,[108] in which the Assembly took note of the report of the Secretary-General on the subject,[109] as well as resolution 51/36 on large-scale pelagic drift-net fishing, unauthorized fishing in zones of national jurisdiction and fisheries by-catch and discards. In that resolution the Assembly, taking note of the report of the Secretary-General,[110] reaffirmed the importance it attached to compliance with its resolution 46/215 of 20 December 1991, in particular to those provisions calling for full implementation of a global moratorium on all large-scale pelagic drift-net fishing on the high seas of world's oceans and seas, including enclosed seas and semi-enclosed seas. The Assembly, furthermore noted that a growing number of States and other entities as well as relevant regional and subregional fisheries management organizations and arrangements had adopted legislation, established regulations or applied other measures to ensure compliance with resolution 46/215 and resolution 49/116 of 19 December 1994, and urged them to enforce fully such measures; urged all authorities of members of the international community that had not done so to take greater enforcement responsibility to ensure full compliance with resolution 46/215 and to impose appropriate sanctions, consistent with their obligations under international law, against acts contrary to the terms of that resolution; 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 and resolution 49/116, to take measures to ensure that no fishing vessels entitled to fly their national flags fished, in areas 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 urged States, relevant international organizations and regional and subregional fisheries management organizations and arrangements to take action to adopt policies, apply measures, including through assistance to developing countries, collect and exchange data and develop techniques to reduce by-catches, fish discards and post-harvest losses consistent with international law and relevant international instruments, including the Code of Conduct for Responsible Fisheries.

The General Assembly also adopted, on 24 October 1996, resolution 51/6, in which it decided to invite the International Seabed Authority to participate in the deliberations of the General Assembly in the capacity of observer.

5. INTERNATIONAL COURT OF JUSTICE[111] [112]

Cases before the Court[113]

(*a*) CONTENTIOUS CASES BEFORE THE FULL COURT

(i) *Aerial Incident of 3 July 1988*

(*Islamic Republic of Iran v. United States of America*)

By a letter of 22 February 1996, the Agents of the two Parties jointly notified the Court that their Governments had agreed to discontinue the case because they had entered into "an agreement in full and final settlement of all disputes, differences, claims, counterclaims and matters directly or indirectly raised by or capable of arising out of, or directly or indirectly related to or connected with, this case". By an Order of the same day,[114] the Court placed on record the discontinuance and directed that the case be removed from the list.

(ii) *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (*Qatar v. Bahrain*)

By an Order of 28 April 1995,[115] the Court, having ascertained the views of Qatar and having given Bahrain an opportunity of stating its views, fixed 29 February 1996 as the time limit for the filing by each of the Parties of a Memorial on the merits. On the request of Bahrain, and after the views of Qatar had been ascertained, the Court, by an Order of 1 February 1996,[116] extended that time limit to 30 September 1996. The two Memorials were filed within the thus extended time limit.

By an Order of 30 October 1996,[117] the President of the Court, taking into account the views of the Parties, fixed 31 December 1997 as the time limit for the filing by each of the Parties of a Counter-Memorial on the merits.

As Judge ad hoc Valticos had resigned, Bahrain chose Mr. Mohamed Shahabuddeen to sit as judge ad hoc.

(iii) *Oil Platforms (Islamic Republic of Iran v. United States of America)*

Public sittings to hear the oral arguments of the Parties on the preliminary objection filed by the United States of America were held between 16 and 24 September 1996.

At a public sitting held on 12 December 1996, the Court delivered its judgment on the preliminary objection[118], a summary of which is given below followed by the text of the operative paragraph:

Institution of proceedings and history of the case

The Court began by outlining the history of the case as set out above. It recalled that the following final submissions were presented by the Parties with regard to the preliminary objection raised by the United States:

On behalf of the United States,

> "The United States of America requests that the Court uphold the objection of the United States to the jurisdiction of the Court in the case concerning Oil Platforms (Islamic Republic of Iran v. United States of America)."

On behalf of Iran,

> "In the light of the facts and arguments set out above, the Government of the Islamic Republic of Iran requests the Court to adjudge and declare:
>
> 1. That the preliminary objection of the United States is rejected in its entirety;
> 2. That, consequently, the Court has jurisdiction under article XXI (2) of the Treaty of Amity to entertain the claims submitted by the Islamic Republic of Iran in its Application and Memorial as they relate to a dispute between the Parties as to the interpretation or application of the Treaty;
> 3. That, on a subsidiary basis in the event the preliminary objection is not rejected outright, it does not possess, in the circumstances of the case, an exclusively preliminary character within the meaning of Article 79 (7) of the Rules of Court; and
> 4. Any other remedy the Court may deem appropriate."

Article XXI, paragraph 2, of the Treaty of 1955 and the nature of the dispute

After summarizing the arguments put forward by Iran in the Application and in the course of the subsequent proceedings, the Court concluded that Iran claimed only that article I, article IV, paragraph 1, and article X, paragraph 1, of the Treaty of 1955 had been infringed by the United States and that the dispute thus brought into being fell within the jurisdiction of the Court pursuant to article XXI, paragraph 2, of the same Treaty.

The United States for its part maintained that the Application of Iran bore no relation to the Treaty of 1955. It stressed that, as a consequence, the dispute that had arisen between itself and Iran did not fall within the provisions of article XXI, paragraph 2, of the Treaty an deduced form this that the Court had to find that it laced jurisdiction to deal with it.

The Court pointed out, to begin with, that the Parties did not contest that the Treaty of 1955 was in force at the date of the filing of the Application of Iran and was moreover still in force. The Court recalled that it had decided in 1980 that the Treaty of 1955 was applicable at that time;119 and stressed that none of the circumstances brought to its knowledge in the instant case would cause it currently to depart from that view.

By the terms of article XXI, paragraph 2, of that Treaty:

> "Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

It was not contested that several of the conditions laid down by this text had been met in the instant case: a dispute had arisen between Iran and the United States; it had not been possible to adjust that dispute by diplomacy and the two States had not agreed "to settlement by some other pacific means" as contemplated by article XXI. On the other hand, the Parties differed on the question whether the dispute between the two States with respect to the lawfulness of the actions carried out by the United States against the Iranian oil platforms was a dispute "as to the interpretation of application" of the Treaty of 1955. In order to answer that question, the Court could not limit itself to noting that one of the Parties maintained that such a dispute existed, and the other denied it. It had to ascertain whether the violations of the Treaty of 1955 pleaded by Iran did or did not fall within the provisions of the Treaty and whether, as a consequence, the dispute was one which the Court had jurisdiction ratione materiae to entertain, pursuant to article XXI, paragraph 2.

Applicability of the Treaty of 1955 in the event of the use of force

The Court first dealt with the Respondent's argument that the Treaty of 1955 did not apply to questions concerning the use of force. In that perspective, the United States contended that, essentially, the dispute related toe the lawfulness of actions by naval forces of the United States that "involved combat operations" and that there was simply no relationship between the wholly commercial and consular provisions of the Treaty and Iran's Application and Memorial, which focused exclusively on allegations of unlawful uses of armed force.

Iran maintained that the dispute that had arisen between the Parties concerned the interpretation or application of the Treaty of 1955. It therefore requested that the preliminary objection be rejected, or, on a subsidiary basis, if it was not rejected outright, that it should be regarded as not having an exclusively preliminary character within the meaning of Article 79, paragraph 7, of the Rules of Conduct.

The Court noted in the first place that the Treaty of 1955 contained no provision expressly excluding certain matters from the jurisdiction of the Court. It took the view that the Treaty of 1955 imposed on each of the Parties various obligations on a variety of matters. Any action by one of the Parties that was incompatible with those obligations was unlawful, regardless of the means by which it had been brought about. A violation of the rights of one party under the Treaty by means of the use of force was as unlawful as would have been a violation by administrative decision or by any other means. Matters relating to the use of force were therefore not per se excluded from the reach of the Treaty of 1955. The arguments put forward on this point by the United States had therefore to be rejected.

Article I of the Treaty

In the second place, the Parties differed as to the interpretation to be given to article I, article IV, paragraph 1, and article X, paragraph 1, of the Treaty of 1955. According to Iran, the actions which it alleged against the United States were such as to constitute a breach of those provisions and the Court consequently had jurisdiction ratione materiae to entertain the Application. According to the United States, this was not the case.

Article I of the Treaty of 1955 provided that: "There shall be firm and enduring peace and sincere friendship between the United States...and Iran."

According to Iran this provision did not "merely formulate a recommendation or desire..., but imposed actual obligations on the Contracting Parties, obliging them to maintain long-lasting peaceful and friendly relations"; it would have imposed upon the Parties "the minimum requirement...to conduct themselves with regard to the other in accordance with the principles and rules of general international law in the domain of peaceful and friendly relations".

The United States considered, on the contrary, that Iran read "far too much into article I". That text, according to the Respondent, "contain[ed] no standards", but only constituted a "statement of aspiration". That interpretation was called for in the context and on account of the "purely commercial and consular" character of the Treaty.

The Court considered that the general formulation of article I could not be interpreted in isolation from the object and purpose of the Treaty in which it was inserted. There were some Treaties of Friendship which contained not only a provision on the lines of that found in article I but, in addition, clauses aimed at clarifying the conditions of application. However, that did not apply to the instant case. Article I was in fact inserted not into a treaty of that type, but into a treaty of "Amity, Economic Relations and Consular Rights" whose object was, according to the terms of the preamble, the "encouraging [of] mutually beneficial trade and investments and closer economic intercourse generally" as well as "regulating consular relations" between the two States. The Treaty regulated the conditions of residence of nationals of one of the parties on the territory of the other (art. II), the status of companies and access to the courts and arbitration (art. III), safeguards for the nationals and companies of each of the contracting parties as well as their property and enterprises (art. IV), the conditions for the purchase and sale of real property and protection of intellectual property

(art. V), the tax system (art. VI), the system of transfers (art. VII), customs duties and other import restrictions (arts. VIII and IX), freedom of commerce and navigation (arts. X and XI), and the rights and duties of Consuls (arts. XII-XIX).

It followed that the object and purpose of the Treaty of 1955 was not to regulate peaceful and friendly relations between the two States in a general sense. Consequently, article I could not be interpreted as incorporating into the Treaty and all of the provisions of international law concerning such relations. Rather, by incorporating into the body of the Treaty the form of words used in article I, the two States had intended to stress that peace and friendship constituted the precondition for a harmonious development of their commercial, financial and consular relations and that such a development would in turn reinforce that peace and that friendship. It follows that article I had to be regarded as fixing an objective, in the light of which the other Treaty provisions were to be interpreted and applied. The Court further observed that it did not have before it any Iranian document in support of Iran's position. As for the United States documents introduced by the two Parties, they showed that at no time did the United States regard article I as having meaning currently given to it by the Applicant. Nor did the practice followed by the Parties in regard to the application of the Treaty lead to any different conclusions.

In the light of the foregoing, the Court considered that the objective of peace and friendship proclaimed in article I of the Treaty of 1955 was such as to throw light on the interpretation of the other Treaty provisions, and in particular of article IV and X. Article I was thus not without legal significance for such an interpretation, but could not, taken in isolation, be a basis for the jurisdiction of the Court.

Article IV, paragraph 1, of the Treaty

Article IV, paragraph 1, of the Treaty of 1955 provided that:

> "Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws."

The Court, with regard to the arguments advanced by the Parties, observed that article IV, paragraph 1, unlike the other paragraphs of the same article, did not include any territorial limitation. It further pointed out that the detailed provisions of that paragraph concerned the treatment by each party of the nationals and companies of the other party, as well as their property and enterprises. Such provisions did not cover the relevant actions carried out by the United States against Iran. Article IV, paragraph 1, thus did not lay down any norms applicable to the instant case, and could not therefore form the basis of the Court's jurisdiction.

Article X, paragraph 1, of the Treaty

Article X, paragraph 1, of the Treaty of 1955 read as follows: "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

It had not been alleged by the Applicant that any military action had affected its freedom of navigation. Therefore, the question the Court had to decide, in order to determine its jurisdiction, was whether the actions of the United States complained of by Iran had the potential to affect "freedom of commerce" as guaranteed by the provision quoted above.

Iran had argued that article X, paragraph 1, did not contemplate only maritime commerce, but commerce in general; while according to the United States the word "commerce" had to be understood as being confined to maritime commerce; as being confined to commerce between the United States and Iran; and as referring solely to the actual sale or exchange of goods.

Having regard to other indications in the Treaty of an intention of the parties to deal with trade and commerce in general, and taking into account the entire range of activities dealt with in the Treaty, the view that the word "commerce" in article X, paragraph 1, was confined to maritime commerce did not commend itself to the Court.

In the view of the Court, there was nothing to indicate that the parties to the Treaty had intended to use the word "commerce" in any sense different from that which it generally bore. The word "commerce", whether taken in its ordinary sense or in its legal meaning, at the domestic or international level, had a broader meaning than the mere reference to purchase and sale. The Court noted in that connection that the Treaty of 1955 dealt, in its general articles, with a wide variety of matters ancillary to trade and commerce; and referred to the Oscar Chinn case in which the expression "freedom of trade" had been seen by the Permanent Court as contemplating not only the purchase and sale of goods, but also industry, and in particular the transport business.

The Court further pointed out that it sought not in any event to overlook the fact that article X, paragraph 1, of the Treaty of 1955 did not strictly speaking protect "commerce" but "freedom of commerce". Any act such as the destruction of goods destined to be exported, or capable of affecting their transport and their storage with a view to export, which impeded that "freedom", was thereby prohibited. The Court point out in this respect that the oil pumped form the platforms attacked in October 1987 passed from there by subsea line to the oil terminal on Lavan Island and that the Salman complex, object of the attack of April 1988, was also connected to the oil terminal on Lavan by subsea line.

The Court found that on the material currently before it, it was indeed not able to determine if and to what extent the destruction of the Iranian oil platforms had had an effect upon the export trade in Iranian oil; it noted nonetheless that their destruction had been capable of having such an effect and, consequently, of having an adverse effect upon the freedom of commerce as guaranteed by article X, paragraph 1, of the Treaty of 1955. It followed that its lawfulness could be evaluated in relation to that paragraph.

*

In the light of the foregoing, the Court concluded that there existed between the Parties a dispute as to the interpretation and application of article X, paragraph 1, of the Treaty of 1955; that the dispute fell within the scope of the compromissory clause in article XXI, paragraph 2, of the Treaty; and that as a consequence the Court had jurisdiction to entertain the dispute.

The Court noted that since it had to reject the preliminary objection raised by the United States, the submissions whereby Iran had requested it, on a subsidiary basis, to find that the objection did not possess, in the circumstances of the case, an exclusively preliminary character, no longer had any object.

Operative paragraph

"For these reasons,

THE COURT,

(1) Rejects, by fourteen votes to two, the preliminary objection of the United States of America according to which the Treaty of 1955 does not provide any basis for the jurisdiction of the Court;

IN FAVOUR: President Bedjaoui; Judges Guillaume, Shahabuddeen, Weramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; Judge ad hoc Rigaux;

AGAINST: Vice-President Schwebel; Judge Oda;

(2) Finds, by fourteen votes to two, that it has jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of 1955, to entertain the claims made by the Islamic Republic of Iran under Article X, paragraph 1, of that Treaty.

IN FAVOUR: President Bedjaoui; Judges Guillaume, Shahabuddeen, Weramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; Judge ad hoc Rigaux;

AGAINST: Vice-President Schwebel; Judge Oda;

*

Judges Shahabuddeen, Ranjeva, Higgins and Parra-Aranguren and Judge ad hoc Rigaux appended separate opinions to the Judgment of the Court;[120] Vice-President Schwebel and Judge Oda appended dissenting opinions[121]

By an Order of 16 December 1996,[122] the President of the Court, taking into account the agreement of the Parties, fixed 23 June 1997 as the time limit for the filing of the Counter-Memorial of the United States of America. Within the time limit thus fixed, the United States filed the Counter-Memorial and a counter-claim, requesting the Court to adjudge and declare:

"1. That in attacking vessels, laying mines in the Gulf and otherwise engaging in military actions in 1987–1988 that were dangerous and detrimental to maritime commerce, the Islamic Republic of Iran breached its obligations to the United States under article X of the 1955 Treaty, and

"2. That the Islamic Republic of Iran is accordingly under an obligation to make full reparation to the United States for violating the 1955 Treaty in a form and amount to be determined by the Court at a subsequent stage of the proceedings."

(iv) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*

Public sittings to hear the oral arguments of the Parties on the preliminary objection raised by Yugoslavia were held between 29 April and 3 May 1996.

At a public sitting held on 11 July 1996, the Court delivered its judgment on the preliminary objections raised by Yugoslavia, finding that,[123] on the basis of article XI of the Convention on the Prevention and Punishment of the Crime of Genocide, it had jurisdiction; dismissed the additional basis of jurisdiction invoked by Bosnia and Herzegovina and found that the Application was admissible.

Judge Oda appended a declaration to the judgment of the Court;[124] Judges Shi and Vereshchetin appended a joint declaration;[125] Judge ad hoc Lauterpacht also appended a declaration;[126] Judges Shahabuddeen, Weeramantry and Parra-Aranguren appended separate opinions to the judgment;[127] Judge ad hoc Kreca appended a dissenting opinion.[128]

By an Order of 23 July 1996,[129] the President of the Court, taking into account the views expressed by the Parties, fixed 23 July 1997 as the time limit for the filing of the Counter-Memorial of Yugoslavia. The Counter-Memorial was filed within the prescribed time limit. It included counter claims, by which Yugoslavia requested the Court to adjudge and declare:

"3. Bosnia and Herzegovina is responsible for the acts of genocide committed against the Serbs in Bosnia and Herzegovina and for other violations of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide:

— Because it has incited acts of genocide by the 'Islamic Declaration', and in particular by the position contained in it that 'there can be no peace or coexistence between Islamic faith' and non-Islamic social and political institutions';

— Because it has incited acts of genocide by the Novi Vox, paper of the Muslim youth, and in particular by the verses of a 'Patriotic Song' which reads as follows:

'Dear mother, I'm going to plant willows,
We'll hang Serbs from them.
Dear mother, I'm going to sharpen knives,
We'll soon fill pits again';

— Because it has incited acts of genocide by the paper Zmaj of Bosne, and in particular by the sentence in an article published in it that 'Each Muslim must name a Serb and take oath to kill him';

— Because public calls for the execution of Serbs were broadcast on radio 'Hajat' and thereby acts of genocide were incited;

— Because the armed forces of Bosnia and Herzegovina, as well as other organs of Bosnia and Herzegovina, have committed acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, against the Serbs in Bosnia and Herzegovina, which have been stated in chapter seven of the Counter-Memorial;

— Because Bosnia and Herzegovina has not prevented the acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, against the Serbs on its territory, which have been stated in chapter seven of the Counter-Memorial.

4. Bosnia and Herzegovina has the obligation to punish the persons held responsible for the acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

5. Bosnia and Herzegovina is bound to take necessary measures so that the said acts would not be repeated in the future.

6. Bosnia and Herzegovina is bound to eliminate all consequences of the violation of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and provide adequate compensation."

(v) *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*

By an Order of 10 January 1996,[130] the President of the Court, taking into account the views expressed by the Parties at a meeting between the President and the Agents of the Parties held on 10 January 1996, fixed 15 May 1996 as the time limit within which Cameroon might present a written statement of its observations and submissions on the preliminary objections raised by Nigeria. Cameroon filed such statement within the prescribed time limit.

On 12 February 1996, the Registry of the International Court of Justice received from Cameroon a request for the indication of provisional measures, with reference to "serious armed incidents" which had taken place between Cameroonian and Nigerian forces in the Bakassi Peninsula beginning on 3 February 1996.

In its request Cameroon referred to the submissions made in its Application of 29 May 1994, supplemented by an Additional Application of 6 June of that year, as also summed up in its Memorial of 16 March 1995, and requested the Court to indicate the following provisional measures:

"(1) The armed forces of the Parties shall withdraw to the position they were occupying before the Nigerian armed attack of 3 February 1996;

(2) The Parties shall abstain from all military activity along the entire boundary until the judgment of the Court has taken place;

(3) The Parties shall abstain from any act or action which might hamper the gathering of evidence in the present case".

Public sittings to hear the oral observations of the Parties on the request for the indication of provisional measures were held between 5 and 8 March 1996.

At a public sitting, held on 15 March 1996, the President of the Court read the Order on the request for provisional measures made by Cameroon[131], by which the Court indicated that "both Parties should ensure that no action of any kind, and particularly no action by their armed forces, is taken which might prejudice the rights of the other in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before it"; that they "should observe the agreement reached between the Ministers for Foreign Affairs in Kara, Togo, on 17 February 1996, for the cessation of all hostilities in the Bakassi peninsula"; that they "should ensure that the presence of any armed forces in the Bakassi peninsula does not extend beyond the positions in which they were situated prior to 3 February 1996"; that they "should take all necessary steps to conserve evidence relevant to the present case within the disputed area"; and that they "should lend every assistance to the fact-finding mission which the Secretary-General of the United Nations has proposed to send to the Bakassi peninsula".

Judges Oda, Shahabuddeen, Ranjeva and Koroma appended declarations to the Order of the Court,[132] Judges Weeramantry, Shi and Vereshchetin appended a joint declaration,[133] Judge ad hoc Mbaye also appended a declaration,[134] and Judge Ajibola appended a separate opinion to the Order.[135]

(vi) *Fisheries Jurisdiction* (*Spain* v. *Canada*)

Taking into account an agreement concerning the procedure reached between the Parties at a meeting with the President of the Court, held on 27 April 1995, the President, by an Order of 2 May 1995,[136] decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the dispute and fixed 29 September 1995 as the time limit for the filing of the Memorial of the Kingdom of Spain and 29 February 1996 for the filing of the Counter-Memorial of Canada. The Memorial and Counter-Memorial were filed within the prescribed time limits.

Spain chose Mr. Santiago Torres-Bernardez and Canada the Honourable Marc Lalonde to sit as judges ad hoc.

The Spanish Government subsequently expressed its wish to be authorized to file a Reply; the Canadian Government opposed this. By an Order of 8 May 1996,[137] the Court, considering that it was "sufficiently informed, at this stage, of the contentions of fact and law on which the Parties rely with respect to its jurisdiction in the case and whereas the presentation by them of other written pleadings on that question therefore does not appear necessary", decided, by fifteen votes to two, not to authorize the filing of a Reply by the Applicant and a Rejoinder by the Respondent on the question of jurisdiction.

Judge Vereshchetin and Judge ad hoc Torres-Bernardez voted against; the latter appended a dissenting opinion to the Order.[138]

The written proceedings on the question of the jurisdiction of the Court to entertain the dispute were thus concluded.

(vii) *Kasikili/Sedudu Island (Botswana/Namibia)*

On 29 May 1996 the Government of the Republic of Botswana and the Government of the Republic of Namibia notified jointly to the Registrar of the Court a Special Agreement between the two States signed at Gaborone on 15 February 1996, which came into force on 15 May 1996, for the submission to the Court of the dispute existing between them concerning the boundary around Kasikili/Sedudu Island and the legal status of that island.

The Special Agreement refers to a Treaty between Great Britain and Germany respecting the spheres of influence of the two countries, signed on 1 July 1890, and to the appointment, on 24 May 1992, of a Joint Team of Technicial Experts "to determine the boundary between Namibia and Botswana around Kasikili/Sedudu Island" on the basis of that Treaty and of the applicable principles of international law. Unable to reach a conclusion on the question, the Joint Team of Technical Experts recommended "recourse to the peaceful settlement of the dispute on the basis of the applicable rules and principles of international law". At the Summit Meeting held in Harare, Zimbabwe, on 15 February 1995, President Masire of Botswana and President Nujoma of Namibia agreed "to submit the dispute to the International Court of Justice for a final and binding determination".

Under the terms of the Special Agreement, the Parties ask the Court to:

> "determine, on the basis of the Anglo-Germany Treaty of 1 July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili/Sedudu Island and the legal status of the island".

By an Order of 24 June 1996,[139] the Court fixed 28 February and 28 November 1997 respectively as the time limits for the filing by each of the Parties of a Memorial and a Counter-Memorial. A Memorial was filed by each of the Parties within the prescribed time limit.

(*b*) REQUESTS FOR ADVISORY OPINION

(i) *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*

At a public sitting held on 8 July 1996, the Court delivered its Advisory Opinion,140 a summary of which is given below, followed by the text of the final paragraph.

Submission of the request and subsequent procedure

The Court began by recalling that by a letter dated 27 August 1993, filed in the Registry on 3 September 1993, the Director-General of the World Health Organization had officially communicated to the Registrar a decision taken by the World Health Assembly to submit a question to the Court for advisory opinion. The question set forth in resolution WHA46.40, adopted by the Assembly on 14 May 1993, read as follows:

"In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?"

The Court then recapitulated the various stages of the proceedings.

Jurisdiction of the Court

The Court began by observing that, in view of Article 65, paragraph 1, of its Statute and of Article 96, paragraph 2, of the Charter of the United Nations, three conditions had to be satisfied in order to found the jurisdiction of the Court when a request for an advisory opinion was submitted to it by a specialized agency: the agency requesting the opinion had to be duly authorized, under the Charter, to request opinions from the Court; the opinion requested had to be on a legal question; and that question had to be one arising within the scope of the activities of the requesting agency.

Authorization of WHO to request advisory opinions

Where WHO was concerned, the above-mentioned texts were reflected in article 76 of that Organization's Constitution, and in paragraph 2 of article X of the Agreement of 10 July 1948 between the United Nations and WHO which the Court found to have left no doubt that WHO had been duly authorized, in accordance with Article 96, paragraph 2, of the Charter, to request advisory opinions of the Court.

"Legal question"

The Court observed that it had already had occasion to indicate that questions

"framed in terms of law and rais[ing] problems of international law...are by their very nature susceptible of a reply based on law...[and] appear...to be questions of a legal character".141

It found that the question put to the Court by the World Health Assembly did in fact constitute a legal question, as in order to rule on the question submitted to it, the Court needed to identify the obligations of States under the rules of law invoked and assess whether the behaviour in question conformed to those obligations, thus giving an answer to the question posed based on law.

The fact that the question also had political aspects, as, in the nature of things, was the case with so many questions which arose in international life, did not suffice to deprive it of its character as a "legal question" and to "deprive the Court of a competence expressly conferred on it by its Statute". Nor was the political nature of the motives which might be said to have inspired the request, or the political implications that the opinion given might have had, of relevance in the establishment of the Court's jurisdiction to give such an opinion.

Question arising "within the scope of the activities" of WHO

The Court observed that, in order to delineate the field of activity or the area of competence of an international organization, one needed to refer to the relevant rules of the organization and, in the first place, to its constitution. From

a form standpoint, the constituent instruments of international organizations were multilateral treaties, to which the well-established rules of treaty interpretation applied. But they were also treaties of a particular type; their object was to create new subjects of law endowed with a certain autonomy, to which the parties entrusted the task of realizing common goals. Such treaties could raise specific problems of interpretation owing, inter alia, to their character which was conventional and at the same time institutional; the very nature of the organization created, the objectives which had been assigned to it by its founders, the imperatives associated with the effective performance of its functions, as well as its own practice, were all elements which might deserve special attention when the time came to interpret those constituent treaties.

According to the customary rule of interpretation as expressed in article 31 of the 1969 Vienna Convention on the Law of Treaties, the terms of a treaty had to be interpreted "in their context and in the light of its object and purpose" and there were to be

> "taken into account, together with the context:
>
> (*b*) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation".

The Court had had occasion to apply that rule of interpretation several times and would also apply it in the instant case.

Interpretation of the WHO Constitution

The Court pointed out that the functions attributed to WHO were listed in 22 subparagraphs (subparagraphs (*a*) to (v)) in article 2 of its Constitution. None of those subparagraphs expressly referred to the legality of any activity hazardous to health; and none of the functions of WHO was dependent upon the legality of the situations upon which it was bound to act. Moreover, it was stated in the introductory sentence of article 2 that the Organization discharged its functions "in order to achieve its objective". The objective of the Organization was defined in article 1 as being "the attainment by all peoples of the highest possible level of health".

Also referring to the preamble to the Constitution, the Court concluded that, interpreted in accordance with their ordinary meaning, in their context and in the light of the object and purpose of the WHO Constitution, as well as of the practice followed by the Organization, the provisions of its article 2 might be read as authorizing the Organization to deal with the effects on health of the use of nuclear weapons, or of any other hazardous activity, and to take preventive measures aimed at protecting the health of populations in the event of such weapons being used or such activities engaged in.

It went on to observe that the question put to the Court in the instant case related, however, not to the effects of the use of nuclear weapons on health, but to the legality of the use of such weapons in view of their health and environmental effects. And the Court pointed out that whatever those effects might be, the competence of WHO to deal with them was not dependent on the legality of the acts that caused them. Accordingly, it did not seem to the Court that the provisions of article 2 of the WHO Constitution, interpreted in accordance with

the criteria referred to above, could be understood as conferring upon the Organization a competence to address the legality of the use of nuclear weapons, and thus in turn a competence to ask the Court about that matter.

In the view of the Court, none of the functions referred to in the resolution by which the Court had been seized of this request for an opinion had a sufficient connection with the question before it for that question to be capable of being considered as arising "within the scope of [the] activities" of WHO. The causes of the deterioration of human health were numerous and varied; and the legal or illegal character of those causes was essentially immaterial to the measures which WHO had in any case to take in an attempt to remedy their effects. In particular, the legality or illegality of the use of nuclear weapons in no way determined the specific measures, regarding health or otherwise (studies, plans, procedures, etc.), which might be necessary in order to seek to prevent or cured some of their effects. The reference in the question put to the Court to the health and environmental effects, which according to WHO the use of a nuclear weapon would always occasion, did not make the question one that fell within WHO's functions.

The Court went on to point out that international organizations were subjects of international law which did not, unlike States, possess a general competence. International organizations were governed by the "principle of specialty", that is to say, they were invested by the States which created them with powers, the limits of which were a function of the common interests whose promotion those States entrusted to them.

The powers conferred on international organizations were normally the subject of an express statement in their constituent instruments. Nevertheless, the necessities of international life might point to the need for organizations, in order to achieve their objectives, to possess subsidiary powers which were not expressly provided for in the basic instruments which governed their activities. It was generally accepted that international organizations could exercise such powers, known as "implied" powers.

The Court was of the opinion, however, that to ascribe to WHO the competence to address the legality of the use of nuclear weapons-even in view of their health and environmental effects-would be tantamount to disregarding the principle of specialty; for such competence could not be deemed a necessary implication of the Constitution of the Organization in the light of the purposes assigned to it by its member States.

WHO was, moreover, an international organization of a particular kind. As indicated in the preamble and confirmed by article 69 of its Constitution, "the Organization shall be brought into relation with the United Nations as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations". As its Articles 57, 58 and 63 demonstrated, the Charter had laid the basis of a "system" designed to organize international cooperation in a coherent fashion by bringing the United Nations, invested with powers of general scope, into relationship with various autonomous and complementary organizations, invested with sectorial powers.

If, according to the rules on which that system was based, WHO had, by virtue of Article 57 of the Charter, "wide international responsibilities", those responsibilities were necessarily restricted to the sphere of "public health" and cold not encroach on the responsibilities of other parts of the United Nations

system. And there was no doubt that questions concerning the use of force, the regulation of armaments and disarmament were within the competence of the United Nations and lay outside that of the specialized agencies.

For all those reasons, the Court considered that the question raised in the request for an advisory opinion submitted to it by WHO did not arise "within the scope of [the] activities" of that Organization as defined by its Constitution.

WHO's practice

A consideration of the practice of WHO bore out these conclusions. None of the reports and resolutions referred to in the preamble to World Health Assembly resolution WHA46.40, nor resolution WHA46.40 itself, could be taken to express, or to amount on its own to a practice establishing an agreement between the members of the Organization to interpret its Constitution as empowering it to address the question of the legality of the use of nuclear weapons, nor could, in the view of the Court, such a practice be inferred from isolated passages of certain resolutions of the World Health Assembly cited during the current proceedings.

The Court further considered that the insertion of the worlds "including the WHO Constitution" in the question put to the Court did not change the fact that WHO was not empowered to seek an opinion on the interpretation of its Constitution in relation to matters outside the scope of its functions.

Other arguments

The Court finally considered that other arguments put forward in the proceedings to found the jurisdiction of the Court-concerning the way in which World Health Assembly resolution WHA46.40 had been adopted and concerning the reference to that resolution in General Assembly resolution 49/75 K – did not affect the conclusions reached by the Court concerning the competence of WHO to request an opinion on the question raised.

Having arrived at the view that the request for an advisory opinion submitted by WHO did not relate to a question arising "within the scope of [the] activities" of that Organization in accordance with Article 96, paragraph 2, of the Charter, the Court found that an essential condition of founding its jurisdiction in the present case was absent and that it could not, accordingly, give the opinion requested.

Final paragraph

"For these reasons,

THE COURT,

By eleven votes to three,

Finds that it is not able to give the advisory opinion which was requested of it under World Health Assembly resolution WHA46.40 dated 14 May 1993.

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari, Bravo, Higgins.

AGAINST: Judges Shahabuddeen, Weeramantry, Koroma."

*

Judges Ranjeva and Ferrari Bravo appended declarations to the Advisory Opinion;142 Judge Oda appended a separate opinion;[143] and Judges Shahabuddeen, Weeramantry and Koroma appended dissenting opinions.[144]

(ii) *Legality of the Threat or Use of Nuclear Weapons*

At a public sitting held on 8 July 1996, the Court delivered its advisory opinion,[145] a summary of which is given below, followed by the text of the final paragraph.

Submission of the request and subsequent procedure

The Court began by recalling that by a letter dated 19 December 1994, filed in the Registry on 6 January 1995, the Secretary-General of the United Nations had officially communicated to the Registrar the decision taken by the General Assembly to submit a question to the Court for an advisory opinion. The final paragraph of resolution 49/75 K, adopted by the General Assembly on 15 December 1994, which set forth the question, provides that the General Assembly

> "Decides, 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?'"

The Court then recapitulated the various stages of the proceedings.

Jurisdiction of the Court

The Court first considered whether it had the jurisdiction to give a reply to the request of the General Assembly for an advisory opinion and whether, should the answer be in the affirmative, there was any reason it should decline to exercise any such jurisdiction.

The Court observed that it drew its competence in respect of advisory opinions from Article 65, paragraph 1, of its Statute, while Article 96, paragraph 1, of the Charter provides that:

> "The General Assembly or the Security Council may request the International Court of Justice to give and advisory opinion on any legal question."

Some States which opposed the giving of an opinion by the Court argued that the General Assembly and the Security Council might ask for an advisory opinion on any legal question only within the scope of their activities. In the view of the Court, it mattered little whether this interpretation of Article 96, paragraph 1, was or was not correct; in the present case, the General Assembly had competence in any event to seize the Court. Referring to Articles 10, 11 and 13 of the Charter, the Court found that, indeed, the question put to the Court had a relevance to many aspects of the activities and concerns of the General Assembly including those relating to the threat or use of force in international relations, the disarmament process, and the progressive development of international law.

"Legal question"

The Court observed that it had already had occasion to indicate that questions

> "framed in terms of law and rais[ing] problems of international law...are by their very nature susceptible of a reply based on law...[and] appear...to be questions of a legal character"[146]

It found that the question put to the Court by the General Assembly was indeed a legal one, since the Court was asked to rule on the compatibility of the threat or use of nuclear weapons with the relevant principles and rules of international law. To do that, the Court had to identify the existing principles and rules, interpret them and apply them to the threat or use of nuclear weapons, thus offering a reply to the question posed based on law.

The fact that the question also had political aspects, as, in the nature of things, was the case with so many questions which arose in international life, did not suffice to deprive it of its character as a "legal question" and to "deprive the Court of a competence expressly conferred on it by its Statute". Nor were the political nature of the motives which might be said to have inspired the request or the political implications that the opinion given might have of relevance in the establishment of the Court's jurisdiction to give such an opinion.

Discretion of the Court to give an advisory opinion

Article 65, paragraph 1, of the Statute provides: "The Court may give an advisory opinion..." (emphasis added) This was more than an enabling provision. As the Court had repeatedly emphasized, the Statue left a discretion as to whether or not the Court would give an advisory opinion that had requested of it, once it had established its competence to do so. In that context, the Court had previously noted as follows:

> "The Court's Opinion is given not to the States, but to the organ which is entitled to request it; the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organization, and, in principle, should not be refused."[147]

In the history of the present Court there had been no refusal, based on the discretionary power of the Court, to act upon a request for advisory opinion; in the case concerning the Legality of the Use by a State of Nuclear Weapons in Armed Conflict the refusal to give the World Health Organization the advisory opinion requested by it had been justified by the Court's lace of jurisdiction in the case.

Several reasons were adduced in the proceedings in order to persuade the Court that in the exercise of its discretionary power it should decline to render the opinion requested by the General Assembly. Some States, in contending that the question put to the Court was vague and abstract, appeared to mean by this that there existed no specific dispute on the subject matter of the question. In order to respond to this argument, it was necessary to distinguish between requirements governing contentious procedure and those applicable to advisory opinions. The purpose of the advisory function was not to settle – at least directly – disputes between States, but to offer legal advice to the organs and

institutions requesting the opinion. The fact that the question put to the Court did not relate to a specific dispute should consequently not lead the Court to decline to give the opinion requested. Other arguments concerned the fear that the abstract nature of the question might lead the Court to make hypothetical or speculative declarations outside the scope of its judicial function; the fact that the General Assembly had not explained to the Court for what precise purposes it sought the advisory opinion; that a reply from the Court in this case might adversely affect disarmament negotiations and would, therefore, be contrary to the interest of the United Nations; and that in answering the question posed, the Court would be going beyond its judicial role and would be taking upon itself a lawmaking capacity.

The Court did not accept those arguments and concluded that it had the authority to deliver an opinion on the question posed by the General Assembly, and that there existed no "compelling reasons" which would lead the Court to exercise its discretion not to do so. It pointed out, however, that it was an entirely different question whether, under the constraints placed upon it as a judicial organ, it would be able to give a complete answer to the question asked of it. But that was a different matter from a refusal to answer to all.

Formulation of the question posed

The Court found it unnecessary to pronounce on the possible divergences between the English and French texts of the question put. Its real objective was clear: to determine the legality or illegality of the threat or use of nuclear weapons. And the argument concerning the legal conclusions to be drawn from the use of the word "permitted", and the questions of burden of proof to which it was said to give rise, were found by the Court to be without particular significance for the disposition of the issues before it.

The applicable law

The Court observed that, in seeking to answer the question put to it by the General Assembly, it had to decide, after consideration of the great corpus of international law norms available to it, what might be the relevant applicable law.

The Court considered that the question whether a particular loss of life, through the use of a certain weapon in warfare, was to be considered an arbitrary deprivation of life contrary to article 6 of the International Covenant on Civil and Political Rights, as argued by some of the proponents of the illegality of the use of nuclear weapons, could only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself. The Court also pointed out that the prohibition of genocide would be pertinent in the present case if the recourse to nuclear weapons did indeed entail the element of intent, towards a group as such, required by article II of the Convention on the Prevention and Punishment of the Crime of Genocide. In the view of the Court, it would only be possible to arrive at such a conclusion after having taken due account of the circumstances specific to each case. And the Court further found that while the existing international law relating to the protection and safeguarding of the environment did not specifically prohibit the use of nuclear weapons, it indicated important environmental factors that were properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict.

In the light of the foregoing the Court concluded that the most directly relevant applicable law governing the question of which it was seized was that relating to the use of force enshrined in the United Nations Charter and the law applicable in armed conflict which regulates the conduct of hostilities, together with any specific treaties on nuclear weapons that the Court might determine to be relevant.

Unique characteristics of nuclear weapons

The Court noted that in order correctly to apply to the case before it the Charter law on the use of the force and the law applicable in armed conflict, in particular humanitarian law, it was imperative for it to take account of the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering and their ability to cause damage to generations to come.

Provisions of the Charter relating to the threat or use of force

The Court then addressed the question of the legality or illegality of recourse to nuclear weapons in the light of the provisions of the Charter relating to the threat or use of force.

In Article 2, paragraph 4, the Charter, the use of force against the territorial integrity or political independence of another State or in any other manner inconsistent with the purposes of the United Nations was prohibited.

This prohibition of the use of force was to be considered in the light of other relevant provisions of the Charter. In Article 51, the Charter recognized the inherent right of individual or collective self-defence in case of an armed attack. A further lawful use of force was envisaged in Article 42, whereby the Security Council might take military enforcement measures in conformity with Chapter VII of the Charter.

These provisions did not refer to specific weapons. They applied to any use of force, regardless of the weapons employed. The Charter neither expressly prohibited, nor permitted, the use of any specific weapon, including nuclear weapons.

The entitlement to resort to self-defence under Article 51 was subject to the conditions of necessity and proportionality. As the Court had stated in the case concerning Military and Paramilitary Activities in and against Nicaragua:148 "there is a specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law".

The proportionality principle might thus not in itself exclude the use of nuclear weapons in self-defence in all circumstances. But at the same time, a use of force that was proportionate under the law of self-defence should, in order to be lawful, also meet the requirements of the law applicable in armed conflict which comprised in particular the principles and rules of humanitarian law. And the Court noted that the very nature of all nuclear weapons and the profound risks associated therewith were further considerations to be borne in mind by States believing they could exercise a nuclear response in self-defence in accordance with the requirements of proportionality.

In order to lessen or eliminate the risk of unlawful attack, States sometimes signaled that they possessed certain weapons to use in self-defence against any State violating their territorial integrity or political independence. Whether a signaled intention to use force if certain events occurred was or was not a "threat" within Article 2, paragraph 4, of the Charter depended upon various factors. The notions of "threat" and "use" of force under Article 2, paragraph 4, of the Charter stood together in the sense that if the use of force itself in a given case was illegal – for whatever reason – the threat to use such force would likewise be illegal. In short, if it was to be lawful, the declared readiness of a State to use force had to be a use of force that was in conformity with the Charter. For the rest, no State- whether or not it defended the policy of deterrence – had suggested to the Court that it would be lawful to threaten to use force if the use of force contemplated would be illegal.

Rules on the lawfulness or unlawfulness of nuclear weapons as such

Having dealt with the Charter provisions relating to the threat or use of force, the Court turned to the law applicable in situations of armed conflict. It first addressed the question whether there were specific rules in international law regulating the legality or illegality of recourse to nuclear weapons per se, it then examined the question put to it in the light of the law applicable in armed conflict proper, i.e. the principles and rules of humanitarian law applicable in armed conflict, and the law of neutrality.

The Court noted by way of introduction that international customary and treaty law did not contain any specific prescription authorizing threat or use of nuclear weapons or any other weapon in general or in certain circumstances, in particular those of the exercise of legitimate self-defence. Nor, however, was there any principle or rule of international law which would make the legality of the threat or use of nuclear weapons or of any other weapons dependent on a specific authorization. State practice showed that the illegality of the use of certain weapons as such did not result from an absence of authorization but, on the contrary, was formulated in terms of prohibition.

It did not seem to the Court that the use of nuclear weapons could be regarded as specifically prohibited on the basis of certain provisions of the Second Hague Declaration of 1899, the Regulations annexed to the Hague Convention IV of 1907 or the 1925 Geneva Protocol. The pattern had been for weapons of mass destruction to be declared illegal by specific instruments. But the Court did not find any specific prohibition of recourse to nuclear weapons in treaties expressly prohibiting the use of certain weapons of mass destruction; and observed that, although, in the last two decades, a great many negotiations had been conducted regarding nuclear weapons, they had not resulted in a treaty of general prohibition of the same kind as for bacteriological and chemical weapons.

The Court noted that the treaties dealing exclusively with the acquisition, manufacture, possession, deployment and testing of nuclear weapons, without specifically addressing their threat or use, certainly pointed to an increasing concern in the international community with those weapons; it concluded from this that those treaties could therefore be seen as foreshadowing a future general prohibition of the use of such weapons, but that they did not constitute such a prohibition by themselves. As to the treaties of Tlatelolco and Rarotonga and

their Protocols, and also the declarations made in connection with the indefinite extension of the Treaty on the Non-Proliferation of Nuclear Weapons, it emerged from these instruments that:

(*a*) A number of States had undertaken not to use nuclear weapons in specific zones (Latin America; the South Pacific) or against certain other States (non-nuclear-weapon States which were parties to the Treaty on the Non-Proliferation of Nuclear Weapons);

(*b*) Nevertheless, even within this framework, the nuclear-weapon States had reserved the right to use nuclear weapons in certain circumstances; and

(*c*) These reservations had met with on objection from the parties to the Tlatelolco or Rarotonga treaties or from the Security Council.

The Court then turned to an examination of customary international law to determine whether a prohibition of the threat or use of nuclear weapons as such flowed from that source of law.

It noted that the members of the international community were profoundly divided on the matter of whether non-recourse to nuclear weapons over the past 50 years constituted the expression of an opinio juris. Under those circumstances the Court did not consider itself able to find that there was such an opinio juris. It pointed out that the adoption each year by the General Assembly, by a large majority, of resolutions recalling the content of resolution 1653 (XVI), and requesting the Member States to conclude a convention prohibiting the use of nuclear weapons in any circumstance, revealed the desire of a very large section of the international community to take, by a specific and express prohibition of the use of nuclear weapons, a significant step forward along the road to complete nuclear disarmament. The emergence, as lex lata, of a customary rule specifically prohibiting the use of nuclear weapons as such was hampered by the continuing tensions between the nascent opinio juris on the one hand, and the still strong adherence to the doctrine of deterrence (in which the right to use those weapons in the exercise of the right to self-defence against an armed attack threatening the vital security interests of the State was reserved) on the other.

International humanitarian law

Not having found a conventional rule of general scope, nor a customary rule specifically proscribing the threat or use of nuclear weapons per se, the Court then dealt with the question whether recourse to nuclear weapons should be considered as illegal in the light of the principles and rules of international humanitarian law applicable in armed conflict and of the law of neutrality.

After sketching the historical development of the body of rules which originally were called "laws and customs of war" and later came to be termed "international humanitarian law", the Court observed that the cardinal principles contained in the texts constituting the fabric of humanitarian law were the following: The first was aimed at the protection of the civilian population and civilian objects and established the distinction between combatants and non-combatants; States should never make civilians the object of attack and should consequently never use weapons that were incapable of distinguishing between civilian and military targets. According to the second principle, it was prohibited to cause unnecessary suffering to combatants: it was accordingly prohibited to use

weapons causing them such harm or uselessly aggravating their suffering. In application of the second principle, States did not have unlimited freedom of choice of means in the weapons they used.

The Court also referred to the Martens Clause, which was first included in the Hague Convention II with Respect to the Laws and Customs of War on Land of 1899 and which had proved to be an effective means of addressing the rapid evolution of military technology. A modern version of that clause was to be found in article 1, paragraph 2, of Additional Protocol I of 1977, which reads as follows:

> "In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

The Extensive codification of humanitarian law and the extent of the accession to the resultant treaties, as well as the fact that the denunciation clauses that existed in the codification instruments had never been uses, had provided the international community with a corpus of treaty rules the great majority of which had already become customary and which had already become customary and which reflected the most universally recognized humanitarian principles. Those rules indicated the normal conduct and behaviour expected of States.

Turning to the applicability of the principles and rules of humanitarian law to a possible threat or use of nuclear weapons, the Court noted that nuclear weapons had been invented after most of the principles and rules of humanitarian law applicable in armed conflict had already come into existence; the Conferences of 1949 and 1974-1977 had left those weapons aside, and there was a qualitative as well as quantitative difference between nuclear weapons and all conventional arms. However, in the Court's view, it could not be concluded from this that the established principles and rules of humanitarian law applicable in armed conflict did not apply to nuclear weapons. Such a conclusion would have been incompatible with the intrinsically humanitarian character of the legal principles and rules of humanitarian law applicable in armed conflict did not apply to nuclear weapons. Such a conclusion would have been incompatible with the intrinsically humanitarian character of the legal principles in question, which permeated the entire law of armed conflict and applied to all forms of warfare and to all kinds of weapons: those of the past, those of the present and those of the future. In that respect it seemed significant that the thesis that the rules of humanitarian law did not apply to the new weaponry, because of the newness of the latter, had not been advocated in the course of the proceedings.

The principle of neutrality

The Court found that as in the case of the principles of humanitarian law applicable in armed conflict, international law left no doubt that the principle of neutrality, whatever its content, which was of a fundamental character similar to that of the humanitarian principles and rules, was applicable (subject to the relevant provisions of the Charter of the United Nations), to all international armed conflict, whatever type of weapons might be used.

Conclusions to be drawn from the applicability of international humanitarian law and the principle of neutrality

The Court observed that, although the applicability of the principles and rules of humanitarian law and the principle of neutrality to nuclear weapons was hardly disputed, the conclusions to be drawn from that applicability were, on the other hand, controversial.

According to one point of view, the fact that recourse to nuclear weapons was subject to and regulated by the law of armed conflict did not necessarily mean that such recourse was as such prohibited. Another view held that recourse to nuclear weapons, in view of the necessarily indiscriminate consequence of their use, could never be compatible with the principles and rules of humanitarian law and was therefore prohibited. A similar view had been expressed with respect to the effects of the principle of neutrality. Like the principles and rules of humanitarian law, that principle had therefore been considered by some to rule out the use of a weapon the effects of which simply could not bed contained within the territories of the contending States.

The Court observed that, in view of the unique characteristics of nuclear weapons, to which the Court had referred earlier, the use of such weapons in fact seemed scarcely reconcilable with respect for the requirements of the law applicable in armed conflict. It considered nevertheless, that it did not have sufficient elements to enable it to conclude with certainty that the use of nuclear weapons would necessarily be at variance with the principles and rules of law applicable in armed conflict in any circumstance. Furthermore, the Court could not lose sight of the fundamental right of every State to survival, and thus its right to resort to self-defence, in accordance with Article 51 of the Charter, when its survival was as stake. Nor could it ignore the practice referred to as "policy of deterrence", to which an appreciable section of the international community had adhered for many years.

Accordingly, in view of the current state of international law viewed as a whole, as examined by the Court, and of the elements of fact at its disposal, the Court was led to observe that it could not reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake.

Obligation to negotiate nuclear disarmament

Given the eminently difficult issues that had arisen in applying the law on the use of force and above all the law applicable in armed conflict to nuclear weapons, the Court considered that it needed to examine one further aspect of the question before it, seen in a broader context.

In the long run, international law, and with it the stability of the international order which it was intended to govern, were bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons. It was consequently important to put an end to this state of affairs: the long-promised complete nuclear disarmament appeared to be the most appropriate means of achieving that result.

In those circumstances, the Court appreciated the full importance of the recognition of article VI of the Treaty on the Non-Proliferation of Nuclear Weapons of an obligation to negotiate in good faith a nuclear disarmament. The legal

import of that obligation of conduct; the obligation involved here was an obligation to achieve a precise result – nuclear disarmament in all its aspects – by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith. This twofold obligation to pursue and to conclude negotiations formally concerned the 182 States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, or, in other words, the vast majority of the international community. Indeed, any realistic search for general and complete disarmament, especially nuclear disarmament, necessitated the cooperation of all States.

The Court finally emphasized that its reply to the question put to it by the General Assembly rested on the totality of the legal grounds set forth by the Court above, each of which was to be read in the light of the others. Some of these grounds were not such as to form the object of formal conclusions in the final paragraph of the Opinion; they nevertheless retained, in the view of the Court, all their importance.

Final paragraph

"For these reasons,

THE COURT,

(1) By thirteen votes to one,

Decides to comply with the request for an advisory opinion;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: Judge Oda.

(2) Replies in the following manner to the question put by the General Assembly:

A. Unanimously,

There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons;

B. By eleven votes to three,

There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;

IN FAVOUR: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: Judges Shahabuddeen, Weeramantry, Koroma.

C. Unanimously,

A threat of use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful;

D. Unanimously,

A threat or use of nuclear weapons should also be compatible with

the requirements of the international law applicable in armed conflicts, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

E. By seven votes to seven, by the President'scasting vote,

It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and particular the principles and rules of humanitarian law;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;

IN FAVOUR: President Bedjaoui; Judges Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo;

AGAINST: Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Koroma, Higgins.

F. Unanimously,

There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."

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President Bedjaoui, Judges Herczegh, Shi, Vereshchetin and Ferrari Bravo Appended declarations to the Advisory Opinion of the Court;[149] Judges Guillaume, Ranjeva and Fleischhauer appended separate opinions;[150] Vice-President Schwebel, Judges Oda, Shahabuddeen, Weeramantry, Koroma and Higgins appended dissenting opinions.[151]

Consideration by the General Assembly

The General Assembly, by its decision 51/405 of 15 October 1996, took note of the report of the International Court of Justice[152]

6. INTERNATIONAL LAW COMMISSION[153]

Forty-eighth session of the Commission[154]

The International Law Commission held its forty-eighth session at its permanent seat at the United Nations Office at Geneva from 6 May to 26 July 1996. The Commission considered the following agenda items:

Regarding the draft Code of Crimes against the Peace and Security of Mankind, the Commission considered the report of the Drafting Committee[155] and adopted the final text of a set of 20 draft articles constituting the Draft Code of Crimes against the Peace and Security of Mankind. Furthermore, the Commission considered various forms the Draft Code could take, e.g., inclusion in an international Convention, adoption by a plenipotentiary conference or by the General

Assembly; incorporation of the Code in the statue of an international criminal court; or adoption of the Code as a declaration by the General Assembly.

Concerning the item of State responsibility, the Commission had before it the eighth report of the Special Rapporteur.[156] The report dealt with problems relating to the regime of internationally wrongful acts singled out as "crimes" based on article 19 of part one as well as some other issues to which the Special Rapporteur deemed it necessary to all the attention of the Commission. The Drafting Committee completed the first reading of draft articles of parts two and three on State responsibility, and the Commission considered the report of the Drafting Committee.[157] Subsequently, the International Law Commission decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations, with the request that they be submitted to the Secretary-General by 1 January 1998.

The item "State succession and its impact on the nationality of natural and legal persons" was considered by the Commission, which had before it the second report of the Special Rapporteur.[158] The report was, in particular, designed to facilitate the task of the Working Group on the topic in its preliminary consideration, at the current session, of the questions of the nationality of legal persons, the choices open to the Commission when embarked on the substantive study of the topic, and a possible timetable. After consideration by the Working Group, the Commission, in accordance with the Working Group's conclusions, recommended to the General Assembly that it should take note of the completion of the preliminary study of the topic and that request the Commission to undertake the substantive study of the topic "Nationally in relation to the succession of States".

For its consideration of the item on international liability for injurious consequences arising out of acts not prohibited by international law, the Commission had before it the twelfth report of the Special Rapporteur,[159] which reviewed the various liability regimes proposed by the Special Rapporteur in his previous reports. The Commission also had before it a Secretariat study entitled "Survey of liability regimes relevant to the topic of international liability for injurious consequences arising out of acts not prohibited by international law."[160] A Working Group was established; it submitted a report to the Commission, which was unable to examine the draft articles at the current session but was of the opinion that, in principle, the proposed draft articles provided a basis for examination by the General Assembly at its fifty-first session.

Regarding the topic of reservations to treaties, the Commission had before it the Special Rapporteur's second report on the item.[161] The report contained a draft resolution on reservations to multilateral normative treaties, including human rights treaties, which was submitted to the General Assembly for the purpose of drawing attention to clarifying the legal aspects of the matter. However, owing to lack of time, the Commission was unable to consider the report and the draft resolution and decided to defer the debate on the topic until the following year.

Consideration by the General Assembly

The General Assembly, by its resolution 51/160 of 16 December 1996, adopted on the recommendation of the Sixth Committee, took note of the report of the International Law Commission on the work of its forty-eighth session.[162] The Assembly also invited the Commission to examine the topics "Diplomatic protection" and "Unilateral acts of States".

7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW[163]

Twenty-ninth session of the Commission[164]

The United Nations Commission on International Trade Law held its twenty-ninth session at United Nations Headquarters in New York form 28 of May to 14 June 1996.

On the topic of international commercial arbitration, the Commission had before it a revision of the draft Notes on Organizing Arbitral Proceedings,[165] which it finalized during the current session, with the title "UNCITRAL Notes on Organizing Arbitral Proceedings".

At the current session, the Commission resumed its consideration of the draft Model Law on Legal Aspects of Electronic Data Exchange and Related Means of Communication[166] and discussed the draft Guide to Enactment of the Model Law[167] which would assist States in enacting and applying the draft Model Law. After consideration, the Commission adopted the UNCITRAL Model Law[168] and requested the Secretary-General to transmit the text of the UNCITRAL Model Law, together with the Guide prepared by the Secretariat, to Governments and other interested bodies.

The Commission also had before it a report prepared by the Secretariat on build-operate-transfer (BOT) projects,[169] containing information on work on BOT being undertaken by other organizations, as well as an outline on issues covered by national laws on BOT and similar arrangements, followed by proposals for work by the Commission. The Commission subsequently endorsed the proposals and considered that any preparatory work should aim at providing legislative guidance to States preparing or modernizing their legislation relating to BOT projects.

At the current session, the Commission had before it the report of the Working Group on International Contract Practices on preparation of a uniform law on assignment in receivables financing.[170] The Commission noted that the Working Group had requested the Secretariat to prepare a revised version of the draft uniform rules.

The Commission also had before it the reports of the Working Group on Insolvency Law[171] concerning judicial cooperation and access and recognition in cross-border insolvency.[172] The Commission expressed the hope that the Working Group would be able to submit a draft legislative text for consideration by the Commission at its thirtieth session in 1997.

Furthermore, it was reported that 32 replies had been received to the questionnaire[173] designed to obtain information relating to the implementation of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[174]

The Commission called upon States parties to the Convention that had not yet replied to the questionnaire to do so, in order that the findings of the survey of national legislation incorporating the Convention could be published, and to determine whether the preparation of a guide for the implementation of the Convention was warranted.

Concerning case law on UNCITRAL texts (CLOUT), the Commission noted that, since its twenty-eighth session in 1995 two additional sets of abstracts with court decisions and arbitral awards had been published relating to the 1980 United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International commercial Arbitration.[175]

The Commission also noted that a thesaurus of the United Nations Convention on Contracts for the International Sale of Goods (i.e., an analytical list of issues arising in the context of the Convention) had been published.[176] The Commission further noted that the Secretariat was currently preparing a thesaurus for the UNCITRAL Model Law on International Commercial Arbitration and requested the Secretariat to expedite the preparation of that thesaurus.[177]

Consideration of the General Assembly

The General Assembly, by its resolution 51/161 of 16 December 1996, adopted on the recommendation by the Sixth Committee, took note of the report of UNCITRAL on the work of its twenty-ninth session,[178] reaffirmed the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in the field; and also reaffirmed the importance, in particular for developing countries, of the work of the Commission concerned with training and technical assistance in the field of international trade law, such as assistance in the preparation of national legislation based on legal texts of the Commission.

On the same date, also on the recommendation of the Sixth Committee the General Assembly also adopted resolution 51/162, in which it which recommendation that all efforts should be made to ensure that the Model Law on Electronic Commerce, together with the Guide to Enactment of the Model Law, became generally known and available. The Model Law reads as follows:

Model Law on Electronic Commerce of the United Nations Commissions on International Trade Law

PART ONE, ELECTRONIC COMMERCE IN GENERAL CHAPTER I. GENERAL PROVISIONS

Article 1

Sphere of application[179]

This Law[180] applies to any kind of information in the form of a data message used in the context[181] of commercial[182] activities.

Article 2

Definitions

For the purposes of this Law:

(*a*) "Data message" means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex, or telecopy;

(*b*) "Electronic data interchange (EDI)" means the electronic transfer from computer to computer of information using an agreed standard to structure the information;

(*c*) "Originator" of a data message means a person by whom, or on whose behalf, the data message purports to have been sent or generated prior to storage, if any, but it does not include a person acting as an intermediary with respect to that data message;

(*d*) "Addressee" of a data message means a person who is intended by the originator to receive the data message, but does not include a person acting as an intermediary with respect to that data message;

(*e*) "Intermediary", with respect to a particular data message, means a person who, on behalf of another person, sends, receives or stores that data message or provides other services with respect to that data message;

(*f*) "Information system" means a system for generating, sending, receiving, storing or otherwise processing data messages.

Article 3

INTERPRETATION

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law that are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 4

VARIATION BY AGREEMENT

1. As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of chapter III may be varied by agreement.

2. Paragraph 1 does not affect any right that may exist to modify by agreement any rule of law referred to in chapter II.

CHAPTER II. APPLICATION OF LEGAL REQUIREMENTS TO DATA MESSAGES

Article 5

LEGAL RECOGNITION OF DATA MESSAGES

Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is the form of a data message.

Article 6

WRITING

1. Where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference.

2. Paragraph 1 applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being in writing.

3. The provisions of this article do not apply to the following:[...].

Article 7

SIGNATURE

1. Where the law requires a signature of a person, that requirement is met in relation to a data message if:

(*a*) A method is used to identify that person and to indicate that person's approval of the information contained in the data message; and

(*b*) That method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

2. Paragraph 1 applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

3. The provisions of this article do not apply to the following:[...].

Article 8

ORIGINAL

1. Where the law requires information to be presented or retained in its original form, that requirement is met by a data message if:

(*a*) There exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise; and

(*b*) Where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.

2. Paragraph 1 applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.

3. For the purposes of subparagraph (*a*) of paragraph 1:

(*a*) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage, and display; and

(*b*) The standard reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

4. The provisions of this article do not apply to the following:[...].

Article 9

ADMISSIBILITY AND EVIDENTIAL WEIGHT OF DATA MESSAGES

1. In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of a data message in evidence:

(*a*) On the sole ground that it is a data message; or

(*b*) If it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.

2. Information in the form of a data message shall be given due evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.

Article 10

RETENTION OF DATA MESSAGES

1. Where the law requires that certain documents, records or information be retained, that requirement is met by retaining data messages, provided that the following conditions are satisfied:

(*a*) The information contained therein is accessible so as to be usable for subsequent reference; and

(*b*) The data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and

(*c*) Such information, if any, is retained as enables the identification of the origin and destination of a data message and the date and time when it was sent or received.

2. An obligation to retain documents, records or information in accordance with paragraph 1 does not extend to any information the sole purpose of which is to enable the message to be sent or received.

3. A person may satisfy the requirement referred to in paragraph 1 by using the services of any other person, provided that the conditions set forth in subparagraphs (*a*), (*b*) and (*c*) of paragraph 1 are met.

CHAPTER III. COMMUNICATION OF DATA MESSAGES

Article 11

FORMATION AND VALIDITY OF CONTRACTS

1. In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.

2. The provisions of this article do not apply to the following: [...].

Article 12

RECOGNITION BY PARTIES OF DATA MESSAGES

1. As between the originator and the addressee of a data message, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

2. The provisions of this article do not apply to the following: [...].

Article 13

ATTRIBUTION OF DATA MESSAGES

1. A data message is that of the originator if it was sent by the originator itself.

2. As between the originator and the addresses, a data message is deemed to be that of the originator if it was sent:

(*a*) By a person who had the authority to act on behalf of the originator in respect of that data message; or

(*b*) By an information system programmed by or on behalf of the originator to operate automatically.

3. As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that assumption, if:

(*a*) In order to ascertain whether the data message was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or

(*b*) The data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify data messages as its own.

4. Paragraph 3 does not apply:

(*a*) As of the time when the addressee has both received notice from the originator that the data message is not that of the originator and has had reasonable time to act accordingly; or

(*b*) In a case within paragraph 3 (*b*), at any time when the addressee knew or should have known, had it exercised reasonable care or use any agreed procedure, that the data message was not that of the originator.

5. Where a data message is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee. That presumption does not imply that the data message corresponds to the message received.

6. Where the received acknowledgement states that the related data message met technical requirements, either agreed upon or set forth in applicable standards, it is presumed that those requirements have been met.

7. Except insofar as it related to the sending or receipt of the data message, this article is not intended to deal with the legal consequences that may flow either from that data message or from the acknowledgement of its receipt.

Article 15

TIME AND PLACE OF DISPATCH AND RECEIPT OF DATA MESSAGE

1. Unless otherwise agreed between the originator and the addressee, the dispatch of a data message occurs when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.

2. Unless otherwise agreed between the originator and the addressee, the time of receipt of a data messages, receipt occurs:

(*a*) If the addressee has designated an information system for the purpose of receiving data messages, receipt occurs:

(i) At the time when the data message enters the designated information system; or

(ii) If the data message is sent to an information system of the addressee that is not the designated information system, at the time when the data message is retrieved by the addressee;

(*b*) If the addressee has not designated an information system, receipt occurs when the data message enters an information system of the addressee.

3. Paragraph 2 applies notwithstanding the fact that the place where the information system is located may be different from the place where the data message is deemed to be received under paragraph 4.

4. Unless otherwise agreed between the originator and the addressee, a data messaged is deemed to be dispatched at the place where the originator has its place of business, and is deemed to be received at the place where the addressee has its place of business. For the purposes of this paragraph:

(*a*) If the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business;

(*b*) If the originator or the addressee does not have a place of business, reference is to be made to its habitual residence.

5. The provisions of this article do not apply to the following: [...].

PART TWO. ELECTRONIC COMMERCE IN SPECIFIC AREAS

CHAPTER I. CARRIAGE OF GOODS

Article 16

ACTIONS RELATED TO CONTRACTS OF CARRIAGE OF GOODS

Without derogating from the provisions of part one of this Law, this chapter applies to any action in connection with, or in pursuance of, a contract of carriage of goods, including but not limited to:

(*a*) (i) Furnishing the marks, number, quantity or weight of goods;
(ii) Stating or declaring the nature or value of goods;
(iii) Issuing a receipt of goods;
(iv) Confirming that goods have been loaded;

(*b*) (i) Notifying a person of terms and conditions of the contract;
(ii) Giving instructions to a carrier;

(*c*) (i) Claiming delivery of goods;
(ii) Authorizing release of goods;
(iii) Giving notice of loss of, or damage to, goods;

(*d*) Giving any other notice or statement in connection with the performance of the contract;

(*e*) Undertaking to deliver goods to a named person or a person authorized to claim delivery;

(*f*) Granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;

(*g*) Acquiring or transferring rights and obligations under the contract.

Article 17

TRANSPORT DOCUMENTS

1. Subject to paragraph 3, where the law requires that any action referred to in article 16 be carried out in writing or by using a paper document, that requirement is met if the action is carried out by using one or more data messages.

2. Paragraph 1 applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for failing either to carry out the action in writing or to use a paper document.

3. If a right is to be granted to, or an obligation is to be acquired by, one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by the transfer, or use of, a paper document, that requirement is met if the right or obligation is conveyed by using one or more data messages, provided that a reliable method is used to render such data message or messages unique.

4. For the purposes of paragraph 3, the standard of reliability required shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement.

5. Where one or more data messages are used to effect any action in subparagraphs (*f*) and (*g*) or article 16, no paper document used to effect any such action is valid unless the use of data messages has been terminated and replaced by the use of paper documents. A paper document issued in these circumstances shall contain a statement of such termination. The replacement of data messages by paper documents shall not affect the rights or obligations of the parties involved.

6. If a rule of law is compulsorily applicable to a contract of carriage of goods which is in, or is evidenced by, a paper document, that rule shall not be inapplicable to such a contract of carriage of goods that is evidenced by one or more data messages by reason of the fact that the contract is evidenced by such data message or message instead of by a paper document.

7. The provisions of this article do not apply to the following: [...].

8. LEGAL QUESTIONS DEALT WITH BY THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY AND BY AD HOC LEGAL BODIES

In addition to the report of the International Law Commission and the resolutions regarding international trade law matters, dealt with separately in the above sections, the Sixth Committee also considered additional topics and submitted its recommendations thereon to the General Assembly at its fifty-first session. The Assembly subsequently adopted the following resolutions:

(*a*) *Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts.*

In its resolution 51/155 of 16 December 1996, the General Assembly, having considered the report of the Secretary-General[183] on the status of the Protocols[184] Additional to the Geneva Conventions of 1949[185] and relating to the protection of victims of armed conflicts, recalling the possibility of making use of the International Fact-Finding Commission in relation to an armed conflict, pursuant to article 90 of Protocol I, appreciated the virtually universal acceptance of the Geneva Conventions of 1949 and the increasingly wide acceptance of the two Additional Protocols of 1977; 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; called upon all States that 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; noted with satisfaction that the Twenty-sixth International Conference for the Protection of War Victims,[186] adopted on 1 September 1993, which reaffirmed the necessity of making the implementation of international humanitarian law more effective; and further noted that the Twenty-sixth International Conference had also endorsed the recommendations elaborated by an intergovernmental group of experts aimed at translating the Final Declaration into concrete measures, including the recommendation that the depositary of the Geneva Conventions of 1949 should organize periodic meetings of States parties to those Conventions to consider general problems regarding the application of international humanitarian law.

(*b*) *Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives.*

The General Assembly, by its resolution 51/156 of 16 December 1996, took note of the report of the Secretary-General,[187] strongly condemned acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international governmental organizations and officials of such organizations, and emphasized that such acts could never be justified; urged States to strictly observe, implement and enforce the 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 above mentioned missions, representatives and officials officially present in territories under their jurisdiction, including practical measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organized or engaged in the perpetration of acts against the security and safety of such missions, representatives and officials; and also urged States to take all necessary measures at the national and international levels to prevent any acts of violence against the above-mentioned missions, representatives and officials and to bring offenders to justice.

By the same resolution, the General Assembly recommended that States should cooperate closely through, inter alia, contacts between the diplomatic and consular missions and the receiving State with regard to practical measures designed to enhance the protection, security and safety of diplomatic and consular missions and representatives and with regard to the exchange of information on the circumstances of all serious violations thereof; 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; further recommended that States should cooperate closely with the State in whose territory abuses of diplomatic and consular privileges and immunities might have occurred, including by exchanging information and providing assistance to its judicial authorities in order to bring offenders to justice; and called upon States that had not yet done so to consider becoming parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives.

The General Assembly also called upon States, in cases where a dispute arose in connection with a violation of their international obligations concerning the protection of the missions or the security of the representatives and officials mentioned above, to make use of the means for the peaceful settlement of disputes, including the good offices of the Secretary-General, and to request the Secretary-General, when he deemed it appropriate, to offer his good offices to the States directly concerned.

(*c*) *United Nations Decade of International Law*

The General Assembly, by its resolution 51/157 of 16 December 1996, recalling that the main purposes of the Decade, according to resolution 44/23 of 17 November 1989, should be, inter alia:

(*a*) To promote acceptance of and respect for the principles of international law;

(*b*) To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;

(*c*) To encourage the progressive development of international law and its codification;

(*d*) To encourage the teaching, study, dissemination and wider appreciation of international law,

having considered the report of the Secretary-General[188] and the oral report presented by the Chairman of the Working Group to the Sixth Committee;[189] adopted the programme for the activities for the final term (1997-1999) of the Decade,[190]

(*d*) *Electronic treaty database*

The General Assembly in its resolution 51/158 of 16 December 1996, welcomed the statement of objective of developing a comprehensive electronic database containing all depositary and registration information and disseminating electronically treaties and treaty law-related information from the database, including through online access, as contained in the report of the Secretary-General on the United Nations Decade of International Law,[191] requested the Secretary-General to continue to give priority to the implementation of the computerization programme in the Treaty Section of the Office of Legal Affair of the Secretariat, and also to ensure that all necessary support was provided to expedite the publication of the printed version of the United Nations Treaty Series through the prompt provision of the necessary equipment and translation services; endorsed the proposed Internet dissemination of the United Nations Treaty Series, following the same rules applicable to the printed version of the publication, in addition to the current access to the Multilateral Treaties deposited with the Secretary-General, and recognized that Internet access to treaties and treaty law-related information was particularly valuable in countries where the cost of maintaining complete collections of treaties in bound volume form was relatively high.

(*e*) *Action to be taken in 1999 dedicated to the centennial of the first International Peace Conference and to the closing of the United Nations Decade of International Law*

In its resolution 51/159 of 16 December 1996, the General Assembly, noting that the year 1999 would mark the one-hundredth anniversary of the historic first International Peace Conference, held at The Hague on the initiative of Russia; recalling its resolution 44/23 of 17 November 1989 by which it had proclaimed the United Nations Decade of International Law, to begin in 1990 and conclude in 1999, marking the centennial of the first International Peace Conference to the settling or resolving of international disputes or situations which could cause the infringement of peace, by its adoption of the Convention for the Pacific Settlement of International Disputes[192] and the establishment of the Permanent Court of Arbitration; and recalling that the Final Act of the second International Peace Conference[193] had incorporated a proposal to convene a third

international peace conference; considered it desirable to draft a programme of action dedicated to the centennial of the first International Peace Conference and to the closing of the United Nations Decade of International Law in 1999; and invited the Governments of the Russian Federation and the Netherlands to arrange, as a matter of urgency, a preliminary discussion with other interested Member States on the substantive content of action to be taken in 1999 and to seek, in that respect, the cooperation of the International Court of Justice, The permanent Court of Arbitration as well as other relevant organizations.

(*f*) *Report of the Committee on Relations with the Host Country*

In its resolution 51/163 of 16 December 1996, the General Assembly, having considered the report of the Committee on Relations with the Host Country,[194] and recalling Article 105 of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations,[195] and the Agreement between the United Nations and the United States of American regarding the Headquarters of the United Nations,[196] and the responsibilities of the host country; endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 65 of its report; expressed its appreciation for the efforts made by the host country, and hoped that the concerns raised at the meetings of the Committee would continue to be resolved in a spirit of cooperation and in accordance with international law; and noted with appreciation the efforts of the Committee which had contributed to a decrease in the amount of diplomatic indebtedness, stressed that existing indebtedness continued to be a matter of significant concern to the United Nations and that non-payment of just debts tarnished the image of the Organization itself, and reaffirmed that non-compliance with contractual obligations could not be condoned or justified. The Assembly resolution also welcomed the efforts of the Committee aimed at identifying affordable health care programmes for the diplomatic community; once again urged the host country to consider lifting travel controls with regard to certain missions and to staff members of the Secretariat of certain nationalities, and in at regard noted the positions of the affected States, the Secretary-General and the host country; noted with satisfaction the steps taken by the host country at John F. Kennedy International Airport with regard to special passages for members of the United Nations community, and urged the host country to continue to take appropriate action in that regard to ensure application of those procedures; and called upon the host country to review measures and procedures relating to the parking of diplomatic vehicles, with a view to responding to the growing needs of the diplomatic community, and to consult with the Committee on those issues.

(*g*) *Convention on the law of the non-navigational uses of international watercourses*

The General Assembly, by its resolution 51/206 of 17 December 1996, took note of the report of the Working Group of the Whole and decided to convene a second session of the Working Group of the Whole,[197] for a period of two weeks from 24 March to 4 April 1997, to elaborate a framework convention on the law of the non-navigational uses of international watercourses.

(*h*) *Establishment of an international criminal court*

In its resolution 51/207 of 17 December 1996, the General Assembly, recalling that the International Law Commission at its forty-sixth session had adopted a draft statue for an international criminal court[198] and decided to recommend that an international conference of plenipotentiaries should be convened to study the draft statute and to conclude a convention on the establishment of an international criminal court;[199] recalling also its resolution 49/53 of 9 December 1994, in which it had 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 prepared by the International Law Commission and, in the light of that review, to consider arrangements for the convening of and international conference of plenipotentiaries; and recalling further its resolution 50/46 if 11 December 1995, in which it had decided, in the light of the report of the Ad Hoc Committee on the Establishment of an International Criminal Court,[200] to establish a preparatory committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, taking into account the different views expressed during the meetings, to draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries, and had also decided that the work of the Preparatory Committee should be based on the draft statute prepared by the International Law Commission and should take into account the report of the Ad Hoc Committee and the written comments[201] submitted by States to the Secretary-General on the draft statute for an international criminal court pursuant to paragraph 4 of General Assembly resolution 49/53 and, as appropriate, contributions of relevant organizations; took note of the report of the Preparatory Committee on the Establishment of an International Criminal Court,[202] including the recommendations contained therein, and expressed its appreciation to the Preparatory Committee for the useful work done and the progress made in fulfilling its mandate; and decided that a diplomatic conference of plenipotentiaries should be held in 1998, with a view to finalizing and adopting a convention on the establishment of an international criminal court.

(*i*) *Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions*

The General Assembly, by its resolution 51/208 of 17 December 1996, recalling:

(*a*) The report of the Secretary-General entitled "An Agenda for Peace"[203] in particular paragraph 41 thereof;

(*b*) Its resolution 47/120 A of 18 December 1992, entitled "An Agenda for Peace: preventive diplomacy and related matters", and its resolution 47/120 B of 20 September 1993, entitled "An Agenda for Peace", in particular section IV thereof, entitled "Special economic problems arising from the implementation of preventive or enforcement measures";

(*c*) The position paper of the Secretary-General entitled "Supplement to an Agenda for Peace",[204]

(*d*) The statement by the President of the Security Council of 22 February 1995;[205]

(*e*) The report of the Secretary-General[206] prepared pursuant to the note by the President of the Security Council[207] regarding the question of special economic problems of States as a result of sanctions imposed under Chapter VII of the Charter;

(*f*) The reports of the Secretary-General on economic assistance to States affected by the implementation of the Security Council resolutions imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro),[208]

(*g*) The 1994,[209] 1995[210] and 1996[211] reports of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization containing sections on the consideration by the Committee of the proposals submitted on the question of the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter;

(*h*) The report of the Secretary-General on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter,[212] and taking note of the report of the Secretary-General submitted in accordance with General Assembly resolution 50/51 of 11 December 1995,[213] underlined the importance of consultations under Article 50 of the Charter of the United Nations, as early as possible, with third States which were or might be confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council under Chapter VII of the Charter and of early and regular assessments, as appropriate, of their impact on such States; and welcomed the further measures taken by the Security Council since the adoption of General Assembly resolution 50/51 aimed at increasing the effectiveness and transparency of the sanctions committees.

By the same resolution, the General Assembly requested the Secretary-General to ensure that the competent units within the Secretariat that he had designated to carry out the functions stipulated in paragraph 3 of resolution 50/51 were developed, the capacity and modalities for providing better information and expert assessments for the Security Council and its organs, at their request, about actual or potential effects of sanctions on third States which invoked Article 50 of the Charter; also requested the Secretary-General to continue, on the basis of the work already done, efforts with a view to developing a possible methodology for assessing the adverse consequences actually incurred by third States as a result of preventive or enforcement measures, and to utilize for that purpose all the expertise available throughout the United Nations system, including that of the international financial and trade institutions—that methodology, upon appropriate approval, should be made available to interested States which might wish to use it in preparing the data to be annexed to their applications under Article 50, as well as to the United Nations system, the international financial institutions and the donor community for use in considering requests for assistance; and further requested the Secretary-General to continue, on a regular basis, to collate and coordinate information about international assistance available to third States affected by the implementation of sanctions and to initiate

action to explore innovative practical measures of assistance to the affected third States, inter alia, through cooperation with relevant institutions and organizations inside and outside the United Nations system.

The General Assembly also reaffirmed the important role of the General Assembly, the Economic and Social Council and the Committee for Programme and Coordination in mobilizing and monitoring, as appropriate, the economic assistance efforts by the international community and the United Nations system to States confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council and, as appropriate, in identifying solutions to the special economic problems of those States; and invited the organizations of the United Nations system, international financial institutions, other international organizations, regional organizations and Member States to continue to address more specifically and directly, where appropriate, special economic problems of third States affected by sanctions imposed under Chapter VII of the Charter and, for this purpose, to consider improving procedures for consultations to maintain a constructive dialogue with such States, including through regular and frequent meetings as well as, where appropriate, special meetings between the affected third States and the donor community, with the participation of United Nations agencies and other international organizations.

(*j*) *Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization*

The General Assembly, by its resolution 51/209 of 17 December 1996, recalling its resolution 47/62 of 11 December 1992 on the question of equitable representation on and increase in the membership of the Security Council, and taking note of the report of the Open-ended Working Group on the Question of Equitable Representation on the Increase in the Membership of the Security Council and Other Matters Related to the Security Council[214] and the report of the Open-ended High-level Working Group on the Strengthening of the United Nations System,[215] and also taking note of the report of the Secretary-General submitted in accordance with resolution 51/51,[216] took note of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization,[217] requested the Special Committee, as its session in 1997, in accordance with paragraph 5 of resolution 50/52 of 11 December 1995:

(*a*) To accord appropriate time for the consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations, including the working paper on the draft declaration on the basic principles and criteria for the work of the United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and convlict,[218]

(*b*) To continue to consider on a priority basis the question of the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, taking into consideration the reports of the Secretary-General,[219]

(*c*) To continue its work on the question of the peaceful settlement of disputes between States and, in that context, to continue its consideration of

proposals relating to the peaceful settlement of disputes between States, including the proposal on the establishment of a dispute settlement service offering or responding with its services early in disputes and those proposals relating to the enhancement of the role of the International Court of Justice;

(*d*) To continue to consider proposals concerning the Trusteeship Council in the light of the report of the Secretary-General submitted in accordance with resolution 50/55 of 11 December 1995[220] and the views expressed by the States on the subject during the fifty-first session of the General Assembly.

By the same resolution, the General Assembly requested the Secretary-General, taking into account the views expressed and the practical suggestions made during the debate held within the framework of the Sixth Committee,[221] to expedite the preparation and publication of the supplements to the Repertoire of the Practice of the Security Council and the Repertory of Practice of United Nations Organs and to submit a progress report on the matter to the General Assembly before its fifty-second session; and invited the Special Committee at its session in 1997 to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations.

(*k*) *Measures to eliminate international terrorism*

The General Assembly, by its resolution 51/210 of 17 December 1996, having examined the report of the Secretary-General,[222] reiterated that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes were in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature might be invoked to justify them; called upon all States to adopt further measures in accordance with the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen international cooperation in combating terrorism and, to that end, to consider the adoption of measures such as those contained in the official document adopted by the Group of Seven major industrialized countries and the Russian Federation at the Ministerial Conference on Terrorism, held in Paris on 30 July 1996,[223] and the plan of action adopted by the Inter-American Specialized Conference on Terrorism, held at Lima form 23 to 26 April 1996 under the auspices of the Organization of American States,[224] also called upon all States, with the aim of enhancing the efficient implementation of relevant legal instruments, to intensify, as and where appropriate, the exchange of information on facts related to terrorism and, in so doing, to avoid the dissemination of inaccurate or unverified information; and reiterated its call upon States to refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities.

By the same resolution, the General Assembly urged all States that had not yet done so to consider, as a matter of priority, becoming parties to the Convention on Offences and Certain Other Acts Committed on Board Aircraft,[225] signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft,[226] signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,[227] concluded at Montreal on 23 September 1971, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons,

including Diplomatic Agents,[228] adopted in New York on 14 December 1973, the International Convention against the Taking of Hostages,[229] adopted in New York on 17 December 1973, adopted in New York on 17 December 1979, the Convention on the Physical Protection of Nuclear Material,[230] signed at Vienna on 3 March 1980, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,[231] signed at Montreal on 24 February 1988, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,[232] done at Rome on 10 March 1988, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf,[233] done at Rome on 10 March 1988, and the Convention on the Marking of Plastic Explosives for the Purpose of Detection,[234] done at Montreal on 1 March 1991, and called upon all States to enact, as appropriate, domestic legislation necessary to implement the provisions of those Conventions and Protocols, to ensure that the jurisdiction of their courts enabled them to bring to trial the perpetrators of terrorist acts and to provide support and assistance to other Governments for those purposes. The General Assembly also reaffirmed the Declaration on Measures to Eliminate International Terrorism contained in the annex to its resolution 49/60 of 9 December 1994, and approved the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, the which reads as follows:

Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Declaration on Measures to Eliminate International Terrorism adopted by the General Assembly by its resolution 49/60 of 9 December 1994,

Recalling also the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations,[76]

Deeply distributed by the worldwide persistence of acts of international terrorism in all its forms and manifestations, including those in which States are directly or indirectly involved, which endanger or take innocent lives, have a deleterious effect on international relations and may jeopardize the security of States.

Underlining the importance of States developing extradition agreements or arrangements as necessary in order to ensure that those responsible for terrorist acts are brought to justice,

Noting that the Convention relating to the Status of Refugees,[234] done at Geneva on 28 July 1951, does not provide a basis for the protection of perpetrators of terrorist acts, noting also in this context articles 1, 2, 32 and 33 of the Convention, and emphasizing in this regard the need for States parties to ensure the proper application of the Convention,

Stressing the importance of full compliance by States with their obligations under the provisions of the 1951 Convention[235] and the 1967 Protocol relating to the Status of Refugees,[236] including the principle of non-refoulement of refugees to places where their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group or political opinion, and affirming that the present Declaration does not affect the protection afforded under the terms of the Convention and Protocol and other provisions of international law,

Recalling article 4 of the Declaration on Territorial Asylum adopted by the General Assembly by its resolution 2312 (XXII) of 14 December 1967,

Stressing the need further to strengthen international cooperation between States in order to prevent, combat and eliminate terrorism in all its forms and manifestations,

Solemnly declares the following:

1. The States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed, including those which jeopardize friendly relations among States and peoples and threaten the territorial integrity and security of States;

2. The States Members of the Untied Nations reaffirm that acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations; they declare they knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

3. The States Members of the United Nations reaffirm that States should take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts, considering in this regard relevant information as to whether the asylum-seeker is subject to investigation for or is charged with or has been convicted of offences connected with terrorism and, after granting refugee status, for the purpose of ensuring that that status is not used for the purpose of preparing or organizing terrorist acts intended to be committed against other States or their citizens;

4. The States Members of the United Nations emphasize that asylum-seekers who are awaiting the processing of their asylum applications may not thereby avoid prosecution for terrorist acts;

5. The States Members of the United Nations reaffirm the importance of ensuring effective cooperation between Member States so that those who have participated in terrorist acts, including their financing, planning or incitement, are brought to justice; they stress their commitment, in conformity with the relevant provisions of international law, including international standards of human rights, to work together to prevent, combat and eliminate terrorism and to take all appropriate steps under their domestic laws either to extradite terrorists or to submit the cases to their competent authorities for the purpose of prosecution;

6. In this context, and while recognizing the sovereign rights of States in extradition matters, States are encouraged, when concluding or applying extradition agreements, not to regard as political offences excluded from the scope of those agreements offences connected with terrorism which endanger or represent a physical threat to the safety and security of persons, whatever the motives which may be invoked to justify them;

7. States are also encouraged, even in the absence of at treaty, to consider facilitating the extradition of persons suspected of having committed terrorist acts, insofar as their national laws permit;

8. The States Members of the United Nations emphasize the importance of taking steps to share expertise and information about terrorists, their movements, their support and their weapons and to share information regarding the investigation and prosecution of terrorist acts.

By the same resolution, the General Assembly decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.

9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH[237]

During 1996, the United Nations Institute for Training and Research, in conjunction with the International Court of Justice, held an international colloquium to celebrate the fiftieth anniversary of the Court. The colloquium to celebrate the fiftieth anniversary of the Court. The colloquium, entitled "Increasing the effectiveness of the Court", was attended by eminent international lawyers and legal advisers from States Members of the United Nations.

During the year, UNITAR organized a number of training programmes, including the annual Fellowships Programme in International Law, which is held in conjunction with the Hague Academy of International Law programmes in public and private international law. The UNITAR Programme of Correspondence Instruction was established in response to the recommendations made by the United Nations Special Committee for Peacekeeping Operations that distance-training methodology should be used in the training of peacekeepers. In this connection, in 1996, Commanding United Nations Peacekeeping Operations was released.

CONSIDERATION BY THE GENERAL ASSEMBLY

In its resolution 50/188 of 16 December 1996, adopted on the recommendation of the Second Committee, the General Assembly, having considered the report of the Secretary-General,[238] report of the Acting Executive Director of the UNITAR on the activities of the Institute,[239] and the report of the Joint Inspection Unit,[240] reaffirmed the relevance of UNITAR, particularly in view of the growing importance of training within the United Nations and the training requirements of all Member States, and the pertinence of research activities related to the training undertaken by the Institute within its mandate.

10. COOPERATION BETWEEN THE UNITED NATIONS AND THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

The General Assembly, by its resolution 51/11 of 4 November 1996, adopted without reference to a Main Committee, took note of the report of the report of the Secretary-General,[241] and noted with satisfaction the continuing efforts of the Asian-African Legal Consultative Committee towards strengthening the role of the United Nations and its various organs, including the International Court of Justice, through programmes and initiatives undertaken by the Consultative Committee.

B. General review of the legal activities of intergovernmental Organizations related to the United Nations[241]

1. INTERNATIONAL LABOUR ORGANIZATION

1. The International Labour Conference (ILC) held its 83rd session and its 84th session (Maritime) at Geneva from 4 to 20 June 1996 and from 8 to 22 October 1996, respectively.

2. At its 83rd session, the Conference adopted a Convention (No. 177) and a Recommendation (No. 184) concerning Home Work.[242]

3. At its 84th session (Maritime), the Conference adopted seven instruments: Convention (No. 178) and Recommendation (No. 185) concerning the Inspection of Seafarers' Working and Living Conditions;[243] Convention (No. 179) and Recommendation (No. 186) concerning the Recruitment and Placement of Seafarers;[244] Convention (No. 180) concerning Seafarers' Hours of Work and the Manning of Ships and Recommendation (No. 187) concerning Seafarers' Wages and Hours of Work and the Manning of Ships[245]; as well as the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention (No. 147), 1976.[246]

4. The Committee of Experts on the Application of Conventions and Recommendations met at Geneva from 28 November to 13 December 1996 to adopt its report to the 85th session of the International Labour Conference (1997).[247]

5. Representations were lodged under article 24 of the Constitution of the International Labour Organization alleging non-observance by Congo of the Protection of Wages Convention, 1949 (No. 95);[248] by Peru of the Right of Association (Agriculture) Convention, 1921 (No. 11), the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1958 (No. 111) and the Employment Policy Convention, 1964 (No. 122);[249] by Senegal of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Abolition of Forced Labour Convention, 1957 (No. 105);[250] by Turkey of the Termination of Employment Convention, 1982 (No. 158);[251] by Peru of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);[252] by Venezuela of the Protection of Wages Convention, 1949 (No. 95) and the Termination of Employment Convention, 1982 (No. 158)[254]; by Brazil of the Termination of Employment Convention, 1982 (No. 158)[255]; and by Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden and United Kingdom of Great Britain and Northern Ireland of the Employment Policy Convention, 1964 (No. 122).[256]

6. A complaint was also lodged under article 26 of the Constitution of the International Labour Organization alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29).[257]

7. 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 302nd and 303rd reports (265th Session, March 1996),[258] the 304th report, (266th session, June 1996);[259] and the 305th Report (267th session, November 1996).[260]

8. The Working Party on the Social Dimensions of the Liberation of International Trade, constituted by the Governing Body of ILO at its 260th session (June 1994), held two meetings in 1996 during the 265th[261] (March 1996) and 267th (November 1996)[262] sessions of the Governing Body.

9. The Working Party on Policy regarding the Revision of Standards, constituted within the Committee on Legal Issues and International Labour Standards by the Governing Body of ILO at its 262nd session (March-April 1995),

held two meetings in 1996 during the 265th, (November 1996)[263] and 267th[264] sessions of the Governing Body of ILO. Among other issues, the Working Party considered the question of the possible amendments to the Constitution and the Conference Standing Orders to enable the Conference to abrogate or otherwise terminate obsolete international labour Conventions.

10. As a result of the discussion of the Director General's report to the session International Labour Conference at its 82nd in 1994, the Committee on Legal Issues and International Labour Standards of the Governing Body of266 ILO considered during the latter's 265th, (March 1996)[265] AND 267th (November 1996)[266] sessions the question of the strengthening of ILO's supervisory system.

11. At its 265th session (March 1996), the Governing Body of ILO adopted a set of amendments to the Regulations of the International Institute for Labour Studies,[267] and at its 267th session (November 1996), adopted a set a Rules for the new Regional Meetings[268], which are to replace the former regional conferences convened by ILO.

2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

(*a*) MEMBERSHIP

On 21 December 1995, the Organization received a notice from the United States Department of State regarding the withdrawal for the Commonwealth of Puerto Rico from its associate membership in the Organization. In accordance with the provisions of article XIX of the FAO Constitution, the Commonwealth of Puerto Rico consequently ceased to be an Associate Member of FAO on 21 December 1996.

(*b*) CONSTITUTIONAL AND LEGAL MATTERS

(i) *World Food Summit*

Between 13 and 17 November 1996, nearly 10,000 delegates and journalists converged on FAO headquarters in Rome for the World Food Summit. Heads of State and Government, Ministers of Agriculture and other distinguished delegates from 186 countries joined representatives of NGOs, United Nations, agencies and other internatioal bodies for the Summit proceedings. NGOs, parliamentarians, farmers associations and the private sector held parallel meetings in Rome, as did some 500 young people gathered for a four-day international Youth Forum on food security.

The aim of the World Food Summit an unprecedented gathering in the history of the United Nations and the world, was to raise awareness about issues surrounding world hunger, namely, the fact that more than 800 million human begins are not able to meet their most basic nutritional needs. The Summit's overriding goal was to garner high-level political support for making concrete progress in achieving global food security. Two documents were adopted at the opening session: the Rome Declaration on World Food Security and the World Food Summit Plan of Action, which details the Declaration's policy statements.

Both documents were carefully crafted and agreed by consensus during meetings of the FAO Committee on World Food Security over a two-year period, with the input of all the member countries of FAO. Reaffirming the right of every person to be free from hunger, the Heads of State and Government pledged their political will and shared commitment to ensuring that "all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life", with an "immediate view to reducing the number of undernourished people to half their present level no later than 2015."

The commitments contained in the Plan of Action are intended to lay the foundations for diverse paths to a common objective – food security and a significant decrease in chronic hunger – at the individual, household, national, regional and global levels. These commitments cover seven interrelated areas for Governments to address: (*a*) general conditions for economic and social progress conducive to food security; (*b*) policies aimed at poverty eradication and access to adequate food; (*c*) sustainable increases in food production; (*d*) consideration of the contribution of trade to food security; (*e*) prevention of, preparedness for and response to food emergencies; (*f*) optimal investment in human resources sustainable production capacity and development; and (*g*) cooperation in implementing and monitoring the Plan of Action. The Rome Declaration and the Plan of Action call upon Governments to cooperate actively with one another, with international organizations and in partnership with civil society and the private sector, in a worldwide "Food for All" campaign, symbolized by the FAO motto and emblem: fiat panis.

(ii) *Decisions by the Council*

At its 111th session (October 1996), the Council adopted resolution 2/111, in which it broadened the mandate and changed the title of the Advisory Committee on Pulp and Paper to Advisory Committee on Paper and Wood Products, and abolished the Committee on Wood-based Panel Products.

(*c*) LEGISLATIVE MATTERS

(i) *Agrarian legislation*

Eritrea (land registration legislation); Guinea (land law); Mauritania (oasis legislation); Mozambique (land law); Paraguay (agrarian law).

(ii) *Water Legislation*

El Salvador (water legislation); Guatemala (water legislation) Guinea (water law); Honduras (waster legislation); Iran (Islamic Republic) (water law); Malaysia (irrigation and drainage legislation).

(iii) *Forestry and Wildlife Legislation*

Benin (forestry and wildlife); Bolivia (forestry regulations), Cambodia (forestry); Congo (forestry); Cuba (forestry); Indonesia (forest management); Mauritania (forestry and wildlife); Mozambique (forestry and wildlife); Namibia (forestry); Suriname (forestry); United Republic of Tanzania (forestry of Zanzibar).

(iv) *Environmental legislation*

Cameroon (environmental institutions) Cyprus (nature conservation legislation); Laos (environmental legislation); United Republic of Tanzania (national park legislation; environmental legislation for Zanzibar).

(v) *Fisheries legislation*

Burundi; Central African Republic; Dominica; Ecuador; El Salvador (fish and aquaculture); Estonia (fish and policy framework and development options); Ethiopia; Guinea (institutional aspects); Guyana; Jamaica; Namibia; United Republic of Tanzania, Zaire, and Zambia (institutional choices for cooperation).

(vi) *Animal legislation*

Guinea (institutional), Cattle, Meat and Halieutic Resources Economic Community

(vii) *Food legislation*

Cambodia; Cameroon (rurak) (micro-enterprises); Gabon; Latvia (food); Lebanon; Malta; Romania; Senegal; Slovakia (food standards); Venezuela (food; commercial agriculture; institutional).

(viii) *Pesticides legislation*

Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama).

(ix) *Plant legislation*

Caribbean Community (CARICOM) countries and Suriname; Cyprus (quarantine); Eritrea (research and extension); Ghana (quarantine); Kyrgyzstan (seed); Lithuania (seed and plant breeders' rights); Malaysia (production and marketing); Slovakia; Tonga (quarantine).

(x) *Other*

Burkina Faso (rural radio); Slovakia (agriculture and rural development).

(*d*) CONVENTIONS AND AGREEMENTS CONCLUDED UNDER ARTICLE XIV OF THE FAO CONSTITUTION

The 1993 Agreement for the Establishment of the Indian Ocean Tuna Commission,[269] which approved by the Governing Council in November 1993, entered into force on 27 March 1996.

(*e*) CONVENTIONS AND AGREEMENTS CONCLUDED OUTSIDE THE FRAMEWORK OF FAO IN RESPECT OF WHICH THE DIRECTOR-GENERAL EXERCISES DEPOSITARY FUNCTIONS

Amendments to the 1985 Agreement for the Establishment of the Intergovernmental Organization for Marketing Information and Technical Advisory Services for Fishery Products in the Asia and Pacific Region (INFOFISH),[270] which were adopted by the Governing Council in Kuala Lumpur in December 1995, entered into force on 14 January 1996.

3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

(*a*) INTERNATIONAL REGULATIONS

Preparatory work on new instruments

During 1996, preparatory work was undertaken on a proposed declaration on the protection of the human genome, on a proposed declaration on the safeguarding of future generations, on a possible joint UNESCO – Council of Europe convention on the recognition of qualifications in higher education and European region, on a proposed instrument for the protection of the underwater cultural heritage and on a proposed improvement of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict.[271]

(*b*) HUMAN RIGHTS

Examination of cases and questions concerning the exercise of human rights coming within UNESCO's field of competence

The Committee on Conventions and Recommendations met in private session at UNESCO headquarters form 16 to 19 April and form 8 to 11 October 1996, 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 25 communications, of which 14 were examined with the view to determining their admissibility or otherwise and 2 were examined as regards their substance; 9 were examined for the first time.

Of the communications examined, 2 were declared irreceivable and 2 were struck from the list because they were considered as having been settled. The examination of 21 communications was suspended. The Committee presented its report to the Executive Board at its 149th session.

At its October session, the Committee had before it 23 communications of which 19 were examined as to their admissibility and 2 were examined from the standpoint of their substances; 2 were examined for the first time. Of the communications examined, 1 was declared irreceivable and 2 were struck from the list since they were considered as having been settled. The examination of 19 communications was suspended. The Committee presented its report on its examination of these communications to the Executive Board at its 150th session.

4. WORLD HEALTH ORGANIZATION

(*a*) CONSTITUTIONAL AND LEGAL DEVELOPMENTS

In 1996, no new member state joined the Organization. Thus, at the end of 1996, there were 190 State members and two Associate Members of WHO.

On 1 January 1996, the joint and Co-sponsored United Nations Programme on HIV/AIDS (UNAIDS) began its activities to further mobilize the global response to the HIV/AIDS epidemic. WHO is one of the six co-sponsors of UNAIDS, the other five being: UNICEF, UNDP, UNFPA, UNESCO and International Bank for Reconstruction and Development

In May 1993, WHO had requested the International Court of Justice to give an advisory opinion on the following question: "In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law, including the WHO Constitution?" In July 1996, the Court arrived at the view that the request for an advisory opinion submitted by WHO "did not relate to a question which arises within the scope of [the] activities of WHO", and therefore, the Court found that an essential condition of founding its jurisdiction was absent and that it could not, accordingly, give the opinion requested. Consequently, the Court was not called upon to examine the arguments which were laid before it with regard to the exercise of its discretionary power to give an opinion.

In October 1996, during a ceremony convened by UNDP and the Republic of Korea, WHO signed the Agreement on the Establishment of the International Vaccine Institute. The Institute is meant to be an instrument to contribute to achieving the goals of the Children's Vaccine Initiative (CVI), which is co-sponsored by WHO, UNICEF, UNDP, and the World Bank and the Rockefeller Foundation, and is dedicated to ensuring the availability of safe, effective and affordable vaccines, the development and introduction of improved and new vaccines and strengthening the capacity of developing countries in vaccine development, production and use in immunization programmes.

WHO/Regional Office for the Americas (AMRO)/PAHO. Approximately 175 agreements, both with (Pan American Health Organization PAHO) member States and donors, were opened and a total of 500 agreements required some action in 1996. A Model Technical Cooperation Agreement to assist in the preparation of such agreements was drafted. The computerized database for agreements, containing the most up-to-date information on relevant aspects of signed agreements and status information of agreements under negotiation, was maintained and upgraded.

(*b*) Health legislation

At an inter-agency meeting held in Geneva in April 1996, WHO issued new international Guidelines for Drug Donations. In May 1996, the World Health Assembly adopted resolution WHA49.17 on the international framework convention for tobacco control requesting, inter alia, the Director General to initiate the development of framework convention in accordance with article 19 of the WHO Constitution and to include as part of this framework convention a strategy to encourage member States to move progressively towards the adoption of comprehensive tobacco control policies and also to deal with aspects of tobacco control that transcend national boundaries.

5. WORLD BANK

(*a*) IBRD, IFC AND IDA-MEMERBERSHIP

On 1 April 1996, Bosnia and Herzegovina fulfilled the requirements of the resolutions of the Boars of Directors of the Bank, IFC and IDA of 25 February 1993 on the succession to the membership of the former Socialist Federal Republic of Yugoslavia and became a member of the Bank, IFC and IDA as of 25 February 1993. During 1996, St Kitts and Nevis became a member of the International Finance Corporation. As of 31 December 1996, IBRD had 180 members; IFC, 170; and IDA, 159.

(*b*) WORLD BANK INSPECTION PANEL

Review of resolution

The resolution establishing the Inspection Panel calls for a review after two yeas from the date of appointment of the first panel members. On 17 October 1996, the Executive Directors of the Bank and IDA completed the review process (except for the question of inspection of World Bank Group private sector projects) by considering and endorsing the clarifications recommended by management on the basis of the discussions of the Executive Directors' Committee on Development Effectiveness (CODE). The Inspection Panel and management are requested by the Executive Directors to observe the clarifications in their application of the resolution.

In general, the clarifications confirm the text of the resolution and the decisions on its interpretation and application that had been made in individual cases. In particular, the clarifications confirm that the Executive Directors will continue to have authority to: (*a*)interpret the resolution; and (*b*) authorize inspections. The clarifications also confirm that: (*a*) the "affected party", which the resolution describes as "a community of persons such as an organization, association, society or other grouping of individuals", includes any two or more persons who share some common interests or concerns; (*b*) the word "project" as used in the resolution has the same meaning as it generally has in the Bank's practice, and includes projects under consideration by Bank management as well as projects already approved by the Executive Directors; (*c*) the Panel's mandate does not extend to reviewing the consistency of the Bank's practice with any of its policies and procedures, but, as stated in the Resolution, is limited to cases of alleged failure by the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation projects, including cases of alleged failure by the bank to follow up on the borrowers' obligations under loan agreements, with respect to such policies and procedures; and (*d*) no procurement action is subject to inspection by the Panel, whether taken by the Bank or by a borrower. A separate mechanism is available for addressing procurement-related complaints.

The clarifications also deal with the distinction between the two phases of the inspection process, namely the eligibility of the request and the inspection itself. Since the resolution limits the first phase of the inspection process to ascertaining the eligibility of the request, this phase should normally be com-

pleted within the 21 days stated in the resolution. However, in cases where the Inspection Panel believes that it would be appropriate to undertake a "preliminary assessment" of the damages alleged by the requester (in particular when such preliminary assessment could lead to a resolution of the matter without the need for a full investigation), the Panel may undertake the preliminary assessment and indicate to the Board the date on which it would present its findings and recommendations as to the need, if any, for a full investigation. If such a date is expected by the Panel to exceed eight weeks from the date of receipt of management's comments, the Panel should seek Board approval for the extension, possible on a "no-objection" basis. The clarifications add that what is needed at this preliminary stage is not to establish that a serious violation of the Bank's policy has actually resulted in damages suffered by the affected party, but rather to establish whether the complaint is prima facie justified and warrants a full investigation because it is eligible under the resolution.

Cases brought to the Panel in 1996[272]

Request No. 6: Bengaldesh: Jamuna Multi-purpose Bridge Project
Request No. 7: Argentina/Paraguay: Yacyreta Hydroelectric Project
Request No. 8: Bangaldesh: Jute Sector Adjustment Credit

(*c*) Multilateral Investment Guarantee Agency (MIGA)

Signatories and members

The 1985 Convention Establishing the Multilateral Investment Guarantee Agency[273] was opened for signature to member countries of the World Bank and Switzerland in October 1985.As of December 1996, the Convention had been signed by 158 countries, 139 of which had also completed membership requirements. During 1996, requirements for membership were completed by Albania, Eritrea, Guatemala, Qatar, Sierra Leone and Yemen.

Guarantee operations

MIGA issues investment guarantees (insurance) to eligible foreign investors in its developing member countries against the political (i.e. noncommerciak) risks of expropriation, currency transfer restriction, breach of contract, and war and civil disturbance. As of 31 December 1996, MIGA had issued 244 contracts of guarantee, totaling US $2.9 billion in maximum contingent liability. Aggregate foreign direct investment facilitated by all MIGA-insured projects was established to be more than $15.0 billion.

Host country investment agreements between MIGA and its member states

As directed by article 23(*b*)(ii) of the Convention, the Agency concluded 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 any State or other public entity in an investment protection treaty or any other agreement relating to foreign investment with respect to the rights to which MIGA may succeed as subrogee of a compensated guarantee holder. In 1996, the Agency concluded agreements with

Armenia, Bolivia, Costa Rica, Croatia, Guinea, Jordan, Oman, the Republic of Moldova, Togo, Trinidad and Tobago, the United Arab Emirates, Viet Nam and Yemen. As of 31 December 1996, 77 such agreements were in force.

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 in settlement of claims with insured investors. In 1996, the Agency concluded agreements with Armenia, Bolivia, Brazil, Costa Rica, Croatia, Guinea, Jordan, Oman, Togo, the Republic of Moldova, Trinidad and Tobago, the United Arab Emirates, Viet Nam and Yemen. As of 31 December 1996, 80 such agreements were in force.

Article 15 of the Convention requires that before issuing a guarantee MIGA must obtain the approval of the host member country in which the investment is contemplated. In order to expedite the process, MIGA negotiates arrangements with host country Governments that provide a degree of automaticity in the approval procedure. IN 1996, the Agency concluded agreements with Bahrain, Bolivia, the Czech Republic, Dominica, Gambia, Guatemala and St. Lucia. As of 31 December 1995, 85 such agreements were in force.

(*d*) International Centre for Settlement of Investment Disputes

Signatures and ratifications

During 1996, the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention[274] was ratified by three countries: Algeria, Bahrain and Panama. There were no new signatories. With the new ratifications, the number of the signatory States remained at 139 and the number of Contracting States reached 126.

Disputes before the Centre

During 1996, arbitration proceedings were instituted in three new cases, Compania del Desarrollo de Santa Elena S.A. v. Government of Costa Rica (case No. ARB/96/1), Misima Mines Pty. Ltd. v. Independent State of Papua New Guinea (case No. ARB/96/2) and Fedax N.V. v. Republic of Venezuela (case No. ARB/96/3). One arbitral proceeding, Philippe Gruslin v. Government of Malaysia (case No. ARB/94/1), was settled by the parties before the rendition of an award and one conciliation proceeding, SEDITEX Engineering Beratungsgesellschaft fur die Textilindustrie m.b.H. v. Government of Madagascar (case No. CONC/94/1), was closed following the rendition of the Conciliation Commission's report.

As of 31 December 1996, five other cases were pending before the Centre: American Manufacturing & Trading, Inc. v. Republic of Zaire (case No. ARB/93/1), Tradex Hellas S.A. v. Republic of Albania (case No. ARB/94/2), Leaf Tobacco A. Michaelides S.A. and Greek-Albania Leaf Tobacco & Co., S.A. v. Republic of Albania (case No. ARB/95/1), Cable Televisioin of St. Kitts and Nevis (case No. ARB/95/2) and Antoine Goetz and others v. Republic of Burundi (case No. ARB/95/3).

6. INTERNATIONAL MONETARY FUND

(*a*) ISSUES CONCERNING MEMBERSHIP OBLIGATIONS

1. *Status and obligations under article VIII or article XIV of the Fund's Articles of Agreement*

Under article VIII, sections 2, 3 and 4 of the Fund's Articles of Agreement, members of the Fund may not, without the Fund's approval: (*a*) impose restrictions on the making of payments and transfers for current international transactions; or (*b*) engage in any discriminatory currency arrangements or multiple currency practices. Notwithstanding the above-mentioned provisions, pursuant to articles XIV, section 2, of the Articles of Agreement of member that notifies the Fund that it intends to avail itself of the transitional arrangements thereunder may maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member. Article XIV does not, however, permit a transfers for current international transactions without the approval of the Fund.

Members that avail themselves of the transitional arrangements of article XIV, section 2, consult with the Fund annually on the restrictions maintained thereunder. The Fund generally encourages such members to remove these restrictions and to formally accept the obligations of article VIII, sections 2, 3 and 4. Where necessary, and if requested by a member, the Fund also provides technical assistance to help the member remove these restrictions.

In 1996, the following 24 countries formally accepted the obligations of article VIII, sections 2, 3 and 4, raising the total number of countries who have accepted these obligations (as of 31 December 1996) to 138: Benin, Burkina Faso, Cameroon, Chad, China, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Georgia, Hungary, Kazakhstan, Madagascar, Mali, Mongolia, Namibia, Niger, Russian Federation, Senegal, Togo, Ukraine, United Republic of Tanzania, Yemen.

2. *Overdue financial obligations to the Fund*

As of 31 December 1996, seven members were in protracted arrears to the Fund, i.e., financial obligations to the Fund that were overdue by six months or more (an increase of one member from 31 December 1995).

Article XXVI, section 2(*a*), of the Fund's Articles of Agreement provides that if "a member fails to fulfill any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund." Of the seven members with protracted arrears to the Fund, declarations under article XXVI, section 2(*a*), remained in effect in 1996 with respect to Liberia, Somalia, the Sudan and Zaire.[275]

3. *Suspension of voting rights and compulsory withdrawal – Sudan and Zaire*

(*a*) *Sudan*

In 1996, Sudan's voting and related rights remained suspended in accordance with article XXVI, section 2(*b*), of the Fund's Articles of Agreement (suspension was effective 9 August 1993). Subsequently, on 8 April 1994, the Managing Director issued a complaint under article XXVI, section 2(*c*), of the Fund's Articles of Agreement, thereby initiating the procedure for the compulsory withdrawal of Sudan form the Fund. During 1996, this complaint was considered by the Executive Board, which decided to review the complaint again in 1997.

(*b*) *Zaire*

Zaire's voting and related rights were suspended effective 6 August 1993. In reviewing the decision to suspend Zaire's voting rights, the Executive Board decided, on 3 August 1995, that unless Zaire resumed active cooperation with the Fund in the areas of policy implementation and payments performance, it would consider initiating the procedure for Zaire's compulsory withdrawal from the Fund. Such procedure was not initiated in 1996.

(*b*) ISSUES PERTAINING TO REPRESENTATION AT THE FUND

1. *Afghanistan*

Afghanistan has overdue financial obligations to the Fund. In 1996, the matter was last discussed by the Fund's Executive Board on 13 March. In August/September 1996, the Government of President Rabbani was overthrown in Kabul by Taliban forces. However, the military and political situation in Afghanistan immediately following that event was highly unstable, with the Taliban forces controlling little of the territory outside the capital. Therefore, at the Fund's 1996 annual meeting, Afghanistan was represented by a delegation whose members were appointed before the overthrow of President Rabbani.

2. *Somalia*

Somalia continues to have overdue financial obligations to the Fund. In October 1992, the Executive Board of the Fund confirmed that, given the domestic situation in Somalia, there was no effective government for Somalia with which the Fund could carry on its activities. Since then, there has been no Governor and Alternate Governor for Somalia at the Fund and the Fund has had no contacts with the authorities of the country. At the Fund's 1996 annual meeting, Somalia was not represented.

3. *Sudan*

As stated in section (*a*)3.a above, the Fund suspended the voting and related rights of Sudan effective 9 August 1993. In the case of a suspension of the voting rights of a member, paragraph 3(*a*) of schedule L of the Fund's Articles of Agreement provides that the "Governor and Alternate Governor appointed by the member shall cease to hold office." Consequently, the Governor and Alternate Governor positions of the Sudan for the Fund were vacant in 1996 and Sudan was not represented at the Fund's annual meeting that year. The Sudan

was also not represented at the Executive Board of the Fund during 1996, save on the occasions when the Executive Board was considering a matter particularly affecting that country. On those occasions, a representative of the Sudan was allowed to attend the Executive Board meetings, pursuant to paragraph 4 of schedule L of the Articles of Agreement.

4. *Zaire*

As with the Sudan, in view of the suspension of Zaire's voting and related rights with effect form 6 August 1993, the Governor and the Alternate Governor appointed by Zaire ceased to hold office on that date. Zaire therefore was not represented at the 1996 annual meeting of the Fund.

5. *Successor States of the 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 States of[275] could succeed to its membership in the Fund. In accordance with these decisions, by 1996, four of the successor States of the Socialist Federal Republic of Yugoslavia had become members of the Fund. As of the end of 1996, the Federal Republic of Yugoslavia (Serbia and Montenegro) had not succeeded to membership of the Socialist Federal Republic of Yugoslavia in the Fund.

(*c*) Fund facilities and operational guidelines

Enhanced Structural Adjustment Facility (ESAF) Trust – Expansion of Eligibility and extension of commitment period

The ESAF Trust is designed to render financial assistance to low-income developing members. On 19 August 1996, the Executive Board decided to add Bosnia and Herzegovina to the list of members eligible for assistance under this facility. In addition, the Instrument to Establish the ESAF Trust was also amended on 9 December 1996 to enable the Fund to make commitments under the Trust up to 31 December 2000.

(*d*) Opening of Fund archives

Article IX, section 5, of the Fund's Articles of Agreement provides that the "archives of the Fund shall be inviolable." In this connection, on 17 January 1996, the Executive Board of the Fund decided that "outside person, on request, will be given access to documentary materials maintained in the Fund's archives that are over 30 years old, provided, however, that access to Fund documents originally classified as 'secret' or 'strictly confidential' will be granted only upon the Managing Director's consent to their declassification." However, access to the following will not be granted: "(*a*) legal documents and records maintained by the Legal Department of the Fund that are protected by attorney-client privilege; (*b*) documentary materials furnished to the Fund by external parties, including member countries, their instrumentalities and agencies and central banks, that bear confidentiality markings, unless such external parties consent to their declassification; (*c*) personnel files and medical or other records per-

taining to individuals; and (*d*) documents and proceedings of the Grievance Committee of the Fund."

(*e*) Cooperation Agreement with the World Trade Organization

On 9 December 1996, the Fund signed a cooperation agreement with the World Trade Organization. The agreement includes the following main provisions: (*a*) the Fund and WTO shall consult each other with a view to achieving greater coherence in global economic policy-making; (*b*) the Fund agrees to continue participating in consultations which are carried out by WTO on measures taken by a WTO member to safeguard its balance of payments; (*c*) the staff of the Fund and members of the WTO secretariat will be granted observer status in designated entities of the other organizations; (*d*) each organization may communicate its views in writing on matters of mutual interest to the other organization or any of its organs or bodies (excluding WTO's dispute settlement panels), and the views so communicated shall become part of the official record of such organs and bodies; (*e*) the Fund shall inform in writing the relevant WTO body (including dispute, settlement panels) considering exchange measures within the Fund's jurisdiction whether such measures are consistent with the Fund's Articles of Agreement; and (*f*) the two organizations shall enhance information and documents sharing between them.

7. INTERNATIONAL CIVIL AVIATION ORGANIZATION

During 1996, Western Samoa adhered to the 1994 Convention on International Civil Aviation (Chicago Convention),[277] and there was an increase in the number of States parties to the Protocols on the Authentic Trilingual and Quadrilingual Texts of the Chicago Convention, to the International Air Services Transit Agreement as well as to a number of other international multilateral air law instruments.

The Panel of Legal and Technical Experts on the Experts on the Establishment of a Legal Framework with regard to the global navigation satellite systems (GNSS) held its first meeting in Montreal from 25 to 30 November 1996.

(*a*) Work Programme of the Legal Committee

The General Work Programme of the Legal Committee, as decided by the Council at the 3rd meeting of its 146th session on 15 November 1995, comprised the following subjects in the order of priority indicated:

(i) Consideration, with regard to global navigation satellite systems (GNSS), of the establishment of a legal framework;

(ii) Modernization of the Warsaw System and review of the question of the ratification of international air law instruments;

(iii) Liability rules which might be applicable to air traffic services (ATS) providers as well as to other potentially liable parties – liability of air traffic control agencies;

(iv) United Nations Convention on the Law of the Sea – implications, if any, for the application of the Chicago Convention, its annexes and other international air law instruments.

On 3 June, at the 6th meeting of its 148th session, the Council added the following item to the general work programme:

"Acts or offences of concern to the international aviation community and not covered by existing air law instruments."

(*b*) LEGAL MEETINGS

Regarding item (*i*) above, the Panel of Legal and Technical Experts on the Establishment of a Legal Framework with regard to GNSS decided at its 1st meeting, held from 25 to 30 November, to set up two working groups: the first was mandated to develop draft provisions of a charter formulating the fundamental principles for GNSS, while the second will analyse and, as appropriate, draft legal principles or where possible provisions on the subjects of certification, liability, administration, financing and cost recovery, and future operating structures.

Regarding item (ii) above, the Secretariat Study Group established to assist the Legal Bureau in developing a mechanism within the framework of ICAO to accelerate the modernization of the Warsaw System held its 1st meeting in Montreal on 12 and 13 February. The Study Group's report, which included recommendations calling, inter alia, for the development and adoption of a new international legal instrument, were submitted to the Council. The Council on 14 March decided inter alia, to refer the matter to the Legal Committee. The Study Group held a 2nd meeting from 10 to 12 June and reviewed a draft text developed by the Legal Bureau of a new international legal instrument which would modernize and consolidate the Warsaw System. On 19 September, a Rapporteur was appointed on the subject.

8. UNIVERSAL POSTAL UNION

(*a*) PRIVILEGES AND IMMUNITIES

Ninety-six member States extend to representatives of member States, staff members of the International Bureau of UPU and experts the privileges and immunities provided for the 1947 Convention on the Privileges and Immunities of the Specialized Agencies,[278] adopted by the General Assembly of the United Nations on 21 November 1947.

(*b*) GENERAL REVIEW OF LEGAL ACTIVITIES

The general review of the legislative activities of the Universal Postal Union, begun in 1995, was continued in 1996. This important study covers the following areas:

(*a*) Study of the legal, regulatory, technological and commercial environment in relation to the single postal territory;

(*b*) Study of the relationship between certain international agreements and the concept of free circulation of postal items;

(*c*) The status of UPU members and the representation of the parties involved in postal activity;

(*d*) The mission on the Universal Postal Union;

(*e*) Revision of the Acts.

(*c*) Treaties concluded under the auspices of UPU

The Acts of UPU (Constitution, General Regulations, Convention and Agreements), which were signed at Seoul in 1994, entered into force on 1 January 1996.

9. INTERNATIONAL MARITIME ORGANIZATION

(*a*) Membership of the Organization

During 1996, the following countries became members of the International Maritime Organization: Samoa (25 October 1996) and Mongolia (11 December 1996). As at 31 December 1996, the number of members of IMO was therefore 155. There are also two Associate Members.

(*b*) Technical Cooperation subprogramme for maritime legislation

The Legal Committee received information and a progress report on the implementation of the subprogramme for maritime legislation in the Integrated Technical Cooperation Programme from July 1995 to May 1996.

(*c*) Compensation for pollution from ships' bunkers

The Legal Committee at its seventy-fourth session in October 1996 considered a number of submissions and discussed the need for the adoption of an international regime for liability and compensation for damage caused by oil from ships' bunkers.[279] Leaving aside the form of a prospective instrument, the Committee expressed preliminary views on the main issues to be discussed in connection with the possible adoption of international regulations in this regard, namely, vessels to which it should apply and period of application, with particular emphasis on the possible inclusion of a bunkering operation, risks to be covered, channeling of liability and compulsory insurance.

Although the Committee did not reach agreement as to the need of an international instrument, it decided that the subject should be considered at its next session and it was included in the work programme for 1997.

(*d*) Compulsory insurance

The Legal Committee, at its seventy-first session in October 1994, in the light of the discussions on the limitations of liability for passenger claims, had agreed to include the subject of compulsory insurance in its work programme

for the 1996-1997 biennium. At its seventy-fourth session in October 1996, the Committee considered submissions regarding the need for an international instrument on the issue. While there was a strong call to continue consideration of the item, problems were identified regarding the compelling need for an international regime.

The Committee decided that the issue of compulsory insurance warranted further consideration and established a correspondence group, with the mandate to consider suitable measures for introducing rules or evidence of financial security for vessels and requested the Correspondence Group to report to the Legal Committee at its seventy-fifth (April 1997) session. It further agreed to retain the subject as one of the priority subjects in its 1997 work programme.

(*e*) Consideration of the possible review of the International Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Ships, 1952[280]

The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, established by (IMO) and (UNCTAD) at the ninth session of UNCTAD held in Geneva from 2 to 6 December 1996, concluded its work on the revised draft articles for the International Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Ships, 1952, prepared by the secretariats of the two organizations.

The Group agreed to recommend to the IMO Council and to the Trade and Development Board of UNCTAD that they should consider favourably proposing to the General Assembly of the United Nations the convening of a diplomatic conference to consider and adopt a convention on certain rules relating to the arrest of seagoing ships on the basis of the draft articles prepared by the Group of Experts.

(*f*) Draft convention on wreck removal

The Legal Committee, at its seventy-third session, in October 1995, had received a draft international convention on wreck removal prepared by Germany, the Netherlands and the United Kingdom. At its seventy-fourth, session in October 1996, the Committee considered submissions relating thereto. While some delegations were of the view that there was a need for an international regime, others indicated that, although they did not consider that such an instrument was needed at the current stage, they would not object to the matter being considered further by the Committee. In that connection the Committee specifically discussed the geographic scope of application of the treaty, as well as its relationship with other conventions.

The Committee decided to establish a correspondence group to consider issues relating to the scope of application, the relationship between public international law and private law provisions and the relationship with other conventions. The committee decided that the subject should be included in its work programme for 1997 and requested the Correspondence Group to report to the CHCE at its seventy-fifth session (April 1997).

(g) HNS Convention

The International Conference on Hazardous and Noxious Substances and Limitation of Liability, 1996 was held at IMO headquarters from 15 April to 3 May 1996. The Conference was attended by representatives of 73 States, observers form 1 Associate member, representatives form 1 organization of the United Nations system and observers from 4 intergovernmental organizations and 23 non-governmental organizations in consultative status.

As a result of its deliberations the Conference adopted the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).[281]

The HNS Convention establishes a system of compensation for liability for damage caused by hazardous and noxious substances. It covers in principle all kinds of hazardous and noxious substances and defines its scope of application by reference to existing lists of such substances, such as the International Maritime Dangerous Goods Code (IMDG Code) and Annex II of MARPOL.[282] It goes further in its scope than the oil pollution compensation regime in that it covers not only pollution but also the risks of fire and explosion.

The Convention introduces a two-tier system, providing for strict liability of the shipowner, and a system of compulsory insurance. This is supplemented by a second tier, the HNS Fund, financed by cargo interests. In principle, compensation will be paid form the HNS Fund when the shipowner's liability is insufficient to provide full compensation or when no liability arises under the first tier. Contributions to the second tier will levied on persons in the Contracting States who receive a certain minimum quantity of HNS cargo during a calendar year. The tier will consist of one general account for chemicals and three separage accounts has been seen as a way to avoid cross-subsidization between different HNS substances. The general account includes two sectors, the first with contributions in respect of gaseous, liquid and solid chemicals, the second form large-volume and low-volume hazard substances.

The unit of account used in the Convention is the Special Drawing Right (SDR) of the International Monetary Fund. At the time of adoption 1 SDR was roughly equivalent to 1 pound sterling. The liability limits contained in the first tier are based on the gross registered tonnage of the ship concerned. Once these liability limits are reached, compensation would be paid from the second tier, the HNS Fund, which will be limited to 250 million SDRs.

During the course of the Conference it was decided that radioactive materials should not be included in the scope of the Convention. It was considered that most are already covered by other instruments and that the remainder represented a relatively low risk.

Another outstanding issue was whether coal should be included in the scope of the Convention. Many delegations supported its exclusion, indicating that reliable statistics showed that coal could not cause any damage to the environment or outside the ship and expressing concern that its inclusion would substantially increase transport and insurance costs, thus causing serious disadvantages to the national economies of several countries. Other delegations favoured the retention of coal, pointing out that coal had been included in the draft not only to compensate for HNS damage to the environment but also to cover fire

and explosion risks. As a compromise it was suggested that, owing to the low hazard ratio, coal and other substances in appendix B of the Code of Safe Practice for Solid Bulk Cargoes (BC Code) would initially not be required to contribute to the second tier as long as those materials kept their present safety records. In the end the Conference decided that coal and certain other low-hazard bulk cargoes should be excluded from the Convention.

The Conference also considered the issue of the linkage between the HNS Convention and existing treaties on limitation of liability. However, the difficulties of achieving a satisfactory solution were so great that it might even threaten the outcome of the entire Conference with failure. The HNS Convention therefore is not linked to other treaties.

The Conference decided that the Convention was to be deposited with the Secretary-General of IMO. The Secretary-General and the Organization were assigned certain responsibilities in respect of the treaty instrument. The Convention was opened for signature at IMO headquarters from 1 October 1996 until 30 September 1997 and thereafter will remain open for accession. The HNS Convention will enter into force 18 months after the date on which (*a*) at least 12 States, including 4 States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it; and (*b*) the Secretary-General has been informed that a total quantity of at least 40 million tones of cargo contributing to the general account of the International Hazardous and Noxious Substances Fund established by the Convention has been received in those States during the preceding calendar year.

(*h*) Protocol of 1996[283] to amend the Convention on Limitation of Liability for Maritime Claims, 1976[284]

The Conference also considered a draft protocol to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC). The scope of revision extended only to the limits and procedures for amendments.

The Conference agreed to update the limits of compensation for passenger claims to correspond to the Protocol of 1990[285] to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (Athens Convention).[286] It further decided to remove the overall ceiling per incident in respect of passenger claims for death and personal injury. This has the effect that individual passenger claims will only be limited in accordance with the Athens Convention and corresponding regimes. A new provision permits States parties to set higher limits of liability for personal injury or loss of life in respect of passengers in their national law than those prescribed in the Protocol.

As a result of its deliberations, the Conference adopted the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976. The Conference decided that the Protocol was to be deposited with the Secretary-General of IMO. The Secretary-General and the Organization were assigned certain responsibilities in respect of the treaty instrument. The Protocol was opened for signature at IMO headquarters from 1 October 1996 until 30 September 1997 and thereafter will remain open for accession. The Protocol will enter into force 90 days following the date on which 10 States have expressed their consent to be bound by it.

(*i*) 1996 Protocol[287] to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972[288]

The Special Meeting of Contracting Parties to consider and adopt the 1996 Protocol to the London Convention 1972, held in London from 28 October to 8 November 1996, adopted the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

A general obligation under the Protocol requires parties to apply a precautionary approach to environmental protection from dumping whereby preventative measures are taken when there is reason to believe that dumping is likely to cause harm even when there is no conclusive evidence to prove a causal relation between dumping and its effects. The Protocol is more restrictive in that dumping of wastes is prohibited, with the exception of those wastes listed in Annex 1 to the Protocol. Furthermore, incineration at sea is fully prohibited, as well as export of wastes to other countries for dumping or incineration at sea.

The Protocol will be open for signature by States at IMO headquarters from 1 April 1997 to 31 March 1998.

(*j*) Amendments to treaties

(*i*) *1996 amendments to the International Convention for the Safety of Life at Sea (SOLAS) 1974*

The Maritime Safety Committee, at sixty-sixth session (June 1996), adopted by resolution MSC.47(66) amendments to the following chapters of the 1974 SOLAS Convention:

Chapter II-I: Construction – subdivision and stability, machinery and electrical installations;

Chapter III: Life-saving appliances and arrangements;

Chapter IV: Carriage of cargoes;

Chapter XI: Special measures to enhance maritime safety.

The most important are the amendments to chapter III which make mandatory the provisions of the International Life-Saving Appliance (LSA) Code. The Code was adopted by the Maritime Safety Committee at the same session. In accordance with the tacit amendment procedure provided for in article VIII(b)(vii)(2) of the Convention, the amendments shall enter into force on 1 July 1988 unless, prior to 1 January 1998, more than one third of Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constitutes not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments.

At the same session the Maritime Safety Committee adopted by resolution MSC.50(66) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code). The Committee determined in accordance with the tacit amendment procedure referred to above that the amendments shall enter into force on 1 July 1998 provided the amendments are deemed to have been accepted on 1 January 1998.

At the same session, the Maritime Safety Committee adopted by resolution MSC.49(66) amendments to the Guidelines on the enhanced programme of inspections during surveys of bulk carriers and oil tankers (resolution A.744(18)). The Committee determined in accordance with the tacit amendment procedure referred to above that the amendments shall enter into force on 1 July 1998 provided the amendments are deemed to have been accepted on 1 January 1998.

The Maritime Safety Committee, at its sixty-seventh session (December 1996), adopted by resolution MSC.57(67) amendments to the following chapters of the 1974 SOLAS Convention:

II-1: Construction – subdivision and stability, machinery and electrical installations;

II-2: Construction – fire protection, fire detection and fire extinction;

V: Safety of navigation

By virtue of these amendments the provisions of the International Code for Application of Fire Test Procedures (FTP Code) are made mandatory under the 1974 SOLAS Convention. At same session, the Maritime Safety Committee adopted the Code, the text of which is set out in the annex to resolution MSC.61(67). In accordance with the tacit amendment procedure provided in article VIII(b)(viii)(2) of the Convention, the amendments shall enter into force on 1 July 1998 unless, prior to 1 January 1998, more than one third of Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments.

At the same time the Maritime Safety Committee adopted by resolution MSC.58(67) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code). In accordance with the tacit amendment procedure referred to above the amendments shall enter into force on 1 July 1998 provided the amendments are deemed to have been accepted on 1 January 1998.

At the same session the Maritime Safety Committee adopted by resolution MSC.59(67) amendments to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code.) In accordance with the tacit amendment procedure referred to above, the amendments shall enter into force on 1 July 1998 provided the amendments are deemed to have been accepted on 1 January 1998.

(*ii*) *1996 amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, (MARPOK) 1973*

The Marine Environment Protection Committee, at its thirty-eighth session (July 1996), adopted by resolution MEPC.68(38) amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (amendments to Protocol I). The amendments concern the requirements for reports of incidents involving oil or harmful substances to be made and the conditions requiring reports when an incident involves damages, failure or breakdown of a ship of 15 metres in length or above. In accordance with the tacit amendment procedure provided for in ar-

ticle 16(2)(*f*)(iii) and g(ii) of the 1973 MARPOL Convention, the amendments shall enter into force on 1 January 1998 provided the amendments are deemed to have been accepted on 1 July 1997.

At the same session, the Marine Environment Protection Committee adopted by resolution MEPC.69(38) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code). In accordance with the tacit amendment procedure referred to above, the amendments shall enter into force on 1 July 1998, provided the amendments are deemed to have been accepted on 1 January 1998.

At the same session, the Marine Environment Protection Committee adopted by resolution MEPC.70(38) amendments to the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code). In accordance with the tacit amendment procedure referred to above, the amendments shall enter into force 1 July 1998, provided the amendments are deemed to have been accepted on 1 January 1998.

(*iii*) *1996 amendments to the Protocol relating to the Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil, 1973*

The Marine Environment Protection Committee, at its thirty-eighth session (July 1996), adopted by resolution MEPC.73(38), in accordance with article III of the Protocol, an amended list of substances to be annexed to the Protocol. The amended list shall be deemed to have been accepted at the end of the period of six months after it has been communicated, unless, within the period, an objection to the amendments has been communicated to the Organization by not less than one third of the parties. The amended list will enter into force three months after it has been deemed to have been accepted.

(*iv*) *1996 amendments to the Convention on Facilitation of International Maritime Traffic, 1965*

The Facilitation Committee, at its twenty-fourth session (January 1996), adopted by resolution FAL.5(24) a number of amendments to the Annex to the Convention on Facilitation of International Maritime Traffic, 1965. The amendments concern the passenger list, inadmissible persons, pre-import information and national facilitation committees. The Committee determined, in accordance with article VII(2)(*b*) of the Convention, that the amendments shall enter into force on 1 May 1997 unless, prior to 1 February 1997, at least one third of the Contracting Governments to the Convention have notified the Secretary-General in writing that they do not accept the amendments.

(*b*) AMENDMENTS

(*i*) *Amendments to the Annex to the Protocol of 1978 (MARPOL)*

These amendments dealing with port State control on operational requirements were adopted by the Conference of the Parties to the International Convention for the Prevention of Pollution form Ships, 1973, as modified by the

Protocol of 1978 relating thereto, on 2 November 1994. The conditions for their entry into force were met on 3 September 1995 and the amendments entered into force on 3 March 1996.

SOLAS (chapters V, II-2)

These amendments were adopted by the Maritime Safety Committee on 23 May 1994 by resolution MSC.31(63). The conditions for the entry into force of the amendments set out in annex 1 the resolution were met on 1 July 1995 and the amendments entered into force on 1 January 1996.

SOLAS (new chapters IX, X and XI)

These amendments were adopted by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on 24 May 1994 by resolution 1 of the Convention. The conditions for the entry into force of the amendments sets out in annex 1 to the resolution were met on 1 July 1995 and the amendments entered into force on 1 January 1996.

SOLAS (chapters VI and VII)

These amendments were adopted by the Maritime Safety Committee on 9 December 1994 by resolution MSC.42(64). The conditions for their entry into force were met on 1 January 1996 and the amendments entered into force on 1 July 1996.

SOLAS (chapter V)

These amendments were adopted by the Maritime Safety Committee at its sixty-fifth session (May 1995) by resolution MSC.46(65). The conditions for their entry into force were met on 1 July 1996 and the amendments will enter into force on 1 January 1997.

(*ii*) *1994 amendments to the International Convention for the Safety of Life at Sea, 1974*

SOLAS (chapters V, II-2)

These amendments were adopted by the Maritime Safety Committee on 23 May 1994 by resolution MSC.31(63). The conditions for the entry into force of the amendments set out in annex 1 to the resolution (ship reporting systems, emergency towing arrangements on tankers) were met on 1 July 1995 and the amendments entered into force on 1 January 1996.

New chapters IX, X and XI

These amendments were adopted by the Conference of Contracting Governments to the International Convention for Safety of Life at Sea, 1974 on 24 May 1994 by resolution 1 of the Conference. The conditions for the entry into force of the amendments set out in annex 1 to the resolution (new chapter X, -"Safety measures for high-speed craft, new chapter XI, -Special measures to enhance maritime safety") were met on 1 July 1995 and the amendments entered into force on 1 January 1996.

SOLAS (chapters VI and VII)

These amendments were adopted by the Maritime Safety Committee on 9 December 1994 by resolution MSC.42(64). The conditions for their entry into force were met on 1 January 1996 and the amendments will enter into force on 1 July 1996.

(*iii*) *1994 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978*

These amendments were adopted by the Maritime Safety Committee on 23 May 1994 by resolution MSC.33(63). The amendments deal with training requirements for personnel on tankers. The conditions for their entry into force were met on 1 July 1995 and the amendments entered into force on 1 January 1996.

(*iv*) *1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978*

These amendments, together with the Seafarer's Training, Certification and Watchkeeping (STCW) Code, were adopted by the Conference of the Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 on 7 July 1995. The amendments represent a major revision of the Convention. One of the key features is the adoption of the new STCW Code, to which many of the technical regulations have been transferred. Part of the Code is mandatory and part of it contains recommendations only. Under the tacit acceptance procedure, the conditions for entry into force of the amendments were met on 1 August 1996 and the amendments will enter into force on 1 February 1997.

10. WORLD INTELLECTUAL PROPERTY ORGANIZATION

The year 1996, which was the first of a new programming biennium (1996-97), was marked by a high level of WIPO activities in its three main fields of work: cooperation with developing countries in the strengthening of their intellectual property systems (development cooperation); promotion of the adoption of new, or the revision of existing, norms for the protection of intellectual property at the national, regional and multilateral levels (norm-setting); and facilitating the acquisition of intellectual property protections, through international registration systems (registration activities).

(*a*) DEVELOPMENT COOPERATION ACTIVITIES

The resources for development cooperation are double in the Organization's budget of what they were in the 1994-1995 budget in order to meet the ever increasing needs of assistance of developing countries.

The main forms in which WIPO provided assistance to developing countries I the fields of industrial property and copyright and neighboring rights continued to be the development of human resources, the provision of legal advice and technical assistance for the automation of administrative procedures, and the retrieval of technological information.

Many of the development cooperation activities were carried out by WIPO with particular attention to the new needs of developing countries in the context of the 1994 Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement).[289] Thus, the training programs organized by WIPO in 1996

(training courses, seminars, workshops and similar meetings at the national, regional and global levels) systematically covered the TRIPS Agreement, as did the terms of reference of WIPO officials and consultants undertaking advisory missions to developing countries.

During the year, WIPO organized four regional mega-symposiums entirely devoted to the subject of the implications of the TRIPS Agreement for developing countries: one for English-speaking African countries in Pretoria, one for French-speaking African countries in Abidjan, one for the countries of Asia and the Pacific region in Jakarta, and one for the Latin American and Caribbean countries in Caracas. A similar mega-symposium for Arab countries had been organized by WIPO in December 1995, in Cairo. The travel costs of some 200 persons at these meetings were borne by WIPO. Furthermore, in September 1996, WIPO organized in Geneva, in cooperation with the World Trade Organization, a workshop on "TRIPS and Border Enforcement" which was attended by 120 participants from government departments concerned with intellectual property enforcement issues in various countries as well as permanent missions in Geneva.

During the period under review, a total of 120 developing countries, one Territory and nine intergovernmental organizations of developing countries benefited from WIPO's development cooperation programme. Furthermore, 144 courses, seminars or other meetings were held at the global, regional, or national levels, providing training or information to some 12,000 (9,500 in 1995) persons coming from the government and private sectors of developing countries. The travel and living expenses of some 1,200 persons were borne by WIPO. Individual training was organized for 109 nationals of developing countries (89 in 1995). In addition, eight long-term fellowships were granted by WIPO to government officials of developing countries for academic training in institutions of higher learning.

The subjects covered by training activities included the implications of the TRIPS Agreement and legislative, enforcement, administrative, economic and technological aspects of intellectual property. Special training programmes were designed for specific groups, such as policy makers and lawmakers, government officials in charge of the administration of intellectual property, legal practitioners, the judiciary, law enforcement officials, scientists, researchers, academics and entrepreneurs. The subject of the valuation of intellectual property assets was also addressed for the first time in the seminar held at Beijing in November 1996.

A special feature of WIPO's activities for developing countries continued to be the holding of sessions of the "WIPO Academy". In 1996, there were two two-week sessions for middle- and senior-level government officials form 28 countries. The aim of each session was to present, for reflection and discussion, current intellectual property issues in such a way as to highlight the policy considerations behind them and thereby enable the participants in the Academy, on their return to their countries, to better formulate appropriate policies for their Governments.

In the area of legal and technical advice to developing countries, 213 advisory missions were undertaken to 73 developing countries in a variety of fields, including the implications of the TRIPS Agreement, the enactment of laws or the revision of existing ones (particularly to comply with the obligations arising

from the Agreement, (the modernization of national industrial property and copyright administrative infrastructure, including streamlining and computerization of administrative procedures, strengthening of links between national industrial property administrations and the private sector, promotion of invention and innovation, collective copyright management, the establishment of industrial property information services and the creation of national facilities for intellectual property teaching. A number of such advisory missions also provided on-the-job training to staff of national administrations on specialized industrial property areas such as patent and trademark examination and classification and assisted I the installation of computer equipment and software. In total, 330 consultants were engaged either for advisory missions or as lecturers in courses and seminars, representing a 20 per cent increase over 1995.

With regard to the provision of computer software and hardware, 80 developing countries received CD-ROM workstations, personal computers or other modern office equipment and CD-ROMs containing legislative and patent information.

In carrying out its development cooperation programme, WIPO received funds-in-trust from France and Japan and executed projects financed by the United Nations Development Programme, the European Patent Office and the Commission of the European Communities.

Cooperation with developing countries at the regional or subregional level was further strengthened by the continued cooperation with the African Intellectual Property Organization (OAPI), the African Regional Industrial Property Organization (ARIPO), the Association of South East Asian Nations (ASEAN), the Board of the Cartagena Agreement (JUNAC), the Islamic Educational, Scientific and Cultural Organization (ISESCO), the Latin American Economic System (SELA), the Organization of African Unity (OAU), the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA) and the Southern Common Market (MERCOSUR).

A special feature of the development cooperation programme in 1996 was the planning and implementation of WIPO-financed country projects for a number of developing countries. For each project, the assistance needs of a given developing country in the field of intellectual property are identified jointly by WIPO and the authorities of the country. A plan of action is then prepared, on a pluri-annual basis by those authorities and WIPO and implemented.

In July 1996, at WIPO's initiative, cooperation between WIPO and the World Customs Organization was formalized through an exchange of letters. Such cooperation consists of an exchange of information, as well as periodic consultations between the two organizations to establish a schedule of activities of common interest.

(*b*) Norm-setting activities

In the area of norm-setting the year was marked by the entry into force of the 1994 Trademark Law Treaty[290] on 1 August 1996 and the adoption of two new treaties in the field of copyright and neighboring rights in December 1996 (see below). The year 1996 also witnessed decisions on future work relating to the development of the 1995 Hague Agreement concerning the International Deposit of Industrial Designs[291] and the draft Treaty on the Settlement of Intel-

lectual Property Disputes between States. There was progress in the work of the Committee of Experts for the planned Patent Law Treaty, and international discussions on a more effective protection of well-known marks and the commencement of examination of questions concerning trademarks and Internet domain names.

The WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, convened by the Director General of WIPO, was held at Geneva from 2 to 20 December 1996. The Conference adopted two treaties, the 1996 WIPO Copyright Treaty (WCT)[292] and the 1995 WIPO Performances and Phonograms Treaty (WPPT)[293]. One hundred and thirty countries and 83 organizations, represented by some 762 delegates participated.[293] The new treaties clarify existing rights or establish new rights for authors, performing artists (mainly in the aural fixations of their performances) and producers of sound recordings, especially when their works, fixed sound performances or phonograms are used by digital means, as in the Internet.

The Diplomatic Conference urged the continuation of WIPO's efforts for the conclusion of an "Audiovisual Protocol" to complement the WPPT in respect of the rights of performers in the audio-visual fixations of their performance, and a "Database Treaty" for providing a sui generis protection for databases even if they do not qualify for copyright protection.

In the patent area, the Committee of Experts on the Patent Law Treaty (PLT) held two sessions, in June and November 1996, respectively. The Committee considered draft provisions for the proposed PLT and its Regulations, and agreed that, with respect to application formalities, the PLT should follow, to the maximum extent possible, the solutions provided for in the 1970 Patent Cooperation Treaty (PCT)[294] and the PCT Regulations.

Concerning the settlement of intellectual property disputes between States, following a session of a Committee of Experts in July 1996, the WIPO General Assembly decided in September/October 1996 that the draft programme and budget for the 1998-1999 biennium would contain an interim for the holding of a diplomatic conference in the first half of 1998 and that the International Bureau should prepare, by April 1997, a revised draft treaty and draft regulations to serve as the basic proposal for a diplomatic conference.

As regards well-known marks, draft provisions for improved protection of this category of marks were examined in October 1996 by the CHCE of Experts at a second session. The Committee's work will continue in 1997.

As concerns the exploration of new areas of concern for the protection of intellectual property, the Governing Board at the September/October 1996 session requested the International Bureau: (*a*) study the feasibility of an "international deposit" system for nucleotide and/or amino acid sequence listings; (*b*) to study the need for, and feasibility of, the establishment of an international centralized system for recording assignments of patent applications and of patents; (*c*) to conduct a preliminary study concerning a possible new treaty on intellectual property in respect of integrated circuits, which should be in conformity with the provisions of the TRIPS Agreement; and (*d*) to study international intellectual property issues arising from the new global information infrastructure, including the Internet. As regards the latter point, in the fall of 1996 WIPO started preparations for the first meeting, to be held in February 1997, of a group of consultants on trademarks and Internet domain names.

Several new publications were prepared and issued by WIPO in 1996. They included a study on the implications of the TRIPS Agreement on treaties administered by WIPO[295] model provisions on protection against unfair competition.[296] A special brochure was also published containing the text of the WIPO/WTO Cooperation Agreement, accompanied by the text of the TRIPS Agreement and the texts of the provisions mentioned in the TRIPS Agreement of the Paris Convention (1967), the Berne Convention (1971), the Rome Convention (1961), the Treaty on Intellectual Property in Respect of Integrated Circuits (1989), the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the WTO Dispute Settlement Understanding (1994).[297]

(c) International registration activities

Regarding the 1970 Patent Cooperation Treaty (PCT), the increase in the number of international applications filed under the PCT continued in 1996, with a record number of 47,291 international applications filed in 1996, representing a 21.6% increase over 1995 and the equivalent of some 2.5 million national applications. Training seminars and other information meetings on the advantages of the PCT system and its use continued to be organized by WIPO in 40 different countries, in 10 different languages, for an audience of some 7,700 actual and potential PCT users.

The weekly publication of the PCT Gazette, in separate English and French editions, continued in 1996. In May, two special issues of the PCT Gazette were published, one containing the amended list of PCT minimum documentation (list of periodicals), and another containing the amended list of PCT minimum documentation (list of periodicals), and another containing the consolidated text of the Administrative Instructions under the PCT, as in force from May 6, 1996. The PCT Applicant's Guide, which contains information on the filing of international applications and the procedure during the international phase as well as information on the filing of international applications and the procedure during the international phase as well as information on the national phase and the procedure before the designated (or elected) Offices, was updated twice in 1996 to include the many changes that had occurred during the year in respect of the PCT.

Concerning the Madrid system, the total number of international trademark registrations recorded in the International Register in 1996 was 18,485 and the combined total of international trademark registrations and renewals was 22,995, which represented an increase of 1.5% compared to 1995.

As an average of 10.79 countries were designated by registration, the 18,485 and the combined total of international trademark registrations and renewals was 22,995, which represented an increase of 1.5% compared to 1995.

As an average of 10.79 countries were designated by registration, the 18,485 registrations were equivalent to some 200,000 national registrations. Operations under the 1989 Madrid Protocol[298] stated on April 1, 1996,[299] which was also the date of entry into force of the Common Regulations under the 1991 Madrid Agreement and Protocol including the Schedule of Fees, which had been adopted by an extraordinary session of the Madrid Assembly in January 1996.

The April 1, 1996, date, it is observed, coincided with the date of entry into operation of the Community Trade Mark System. In connection with the entry into force of the Madrid Protocol and of the said Common Regulations, WIPO officials gave presentations on the Madrid system at 32 seminars and training courses in 15 countries. Furthermore, WIPO organized, in June, two seminars entirely devoted to the subject of the Madrid system. Also, study visits to the International Register of Marks were organized by WIPO for officials from 57 countries. Furthermore, WIPO organized, in June, two seminars entirely devoted to the subject of the Madrid system. Also, study visits to the International Register of Marks were organized by WIPO for officials from 57 countries. A new guide to the international registration of marks under the Madrid Agreement and the Madrid Protocol was published by WIPO in April 1996 for the benefit of users and administrations. In June 1996, WIPO started to publish, on a biweekly basis, the bilingual publication Gazette OMPI des marques internationales/WIPO Gazette of International Marks, which covers the registrations, renewals and modifications received by the International Bureau under the new Madrid system.

Regarding the Hague system the total of international industrial design deposits, renewals and prolongations was 5,830 in 1996, representing an increase of 3.9% compared to 1995. Work continued in order to make the Hague system accessible to more countries. The Committee of Experts reviewed, in October 1996, the drafts of the International Bureau for a new Act of the Hague Agreement.

(*d*) COUNTRIES IN TRANSITION TO A MARKET-ECONOMY SYSTEM

Since its entry into force, on January 1, 1996, the 1994 Eurasian Patent Convention[300] allows an individual, irrespective of nationality or domicile, to obtain a Eurasian patent, which has effect in all the Contracting States, by filing a single application with, and making a single payment to, the Eurasian Patent Office, which is located in Moscow. By December 31, 1996, nine States, Armenia, Azerbaijan, Belarus, Kazakastan, Kyrgyszstan, the Republic of Moldova, the Russian Federation, Tajikistan and Turkmenistan, had deposited with the Director General of WIPO, who is the depositary of the Convention, their instruments of adherence to the Eurasian Patent Convention. It is to be noted that only countries party to the Paris Convention[301] and the PCT may adhere to the Eurasian Patent Convention.

Technical cooperation with countries in transition to a market-economy system continued in 1996. Nine national and regional seminars and other meetings in the fields of industrial property and copyright and neighboring rights were organized by WIPO for 960 individuals from government and other interested circles. WIPO officials and consultants undertook seven missions to countries in order to provide advice, in particular, on the revision of existing, or the drafting of new, intellectual property legislation (including the implications of the TRIPS Agreement on national legislation), the advantages of adherence to WIPO-administered treaties and the establishment or strengthening of national infrastructure for the administration of intellectual property. In several instances, following the missions, WIPO prepared and sent to the governments concerned draft laws and/or regulations, with commentaries.

(e) WIPO Arbitration and Medication Centre

In 1996, the WIPO Arbitration and Medication Centre continued to undertake a number of promotional activities on the features and advantages of this new space, including a conference on mediation in March, two training programs on mediation in intellectual property disputes in May, and a workshop for arbitrators in November. The third meeting of the WIPO Arbitration and Medication Council, held in November, reviewed the activities of the Center over the 12 preceding months, and examined proposed WIPO Emergency Relief Rules prepared by the International Bureau, with the assistance of a group of experts.

(f) Cooperation with the World Trade Organization

The period under review was marked by the entry into force, on January 1, 1996, of the 1995 Cooperation Agreement between WIPO and the WTO.[302] The Agreement establishes arrangements for cooperation between WIPO and the WTO in respect of the following three areas: (*a*) as far as the texts of the intellectual property laws and regulations of WTO Members notified to the WTO are concerned, the collection of such texts, assistance in their translation where translation is required, furnishing of copies of such texts and translations, and making them accessible through WIPO's computerized database of the said texts and translations; (*b*) as far as the State emblems of WTO Members notified to the WTO are concerned, their notification and publication (also in CD-ROM form); and (*c*) as far as legal-technical assistance to developing countries that are WTO Members is concerned, organizing meetings and missions for the promotion of the implementation of the TRIPS Agreement.

In 1996, WIPO gave to the WTO copies of some 300 intellectual property laws, regulations and/or translations, which a WTO Member had stated to be available in the collection of WIPO. During the same year, WIPO received from the WTO the text of some 500 intellectual property laws and regulations which had been notified to the WTO, and integrated these into WIPO's collection. During the same period, WIPO designed a computerized bibliographic database of intellectual property laws and regulations notified by WTO Members. Also, work started in the International Bureau for the creation of a WIPO full-text computerized database of the said intellectual property laws and regulations. Numerous translations of intellectual property legal texts continued to be carried out by WIPO, mainly for the purpose of publication in paper and electronic format.

(g) New adherences to treaties

The growing importance given to the effective protection of intellectual property was evidenced by the growing membership in WIPO-administered treaties.

In 1996, the following States became party to the following treaties (the figures in parenthesis indicate the total number of States party to the treaties as at 31 December 1996):

WIPO Convention: [303] Mozambique (158);

Paris Convention: [304] Colombia, Nicaragua, Panama, United Arab Emirates (140);

Berne Convention: [305] Haiti, Panama, Republic of Korea, Turkey (119);

Budapest Treaty: [306] Canada, Estonia, Israel (38);

Rome Convention: [307] Saint Lucia, Slovenia, Venezuela (52);

Geneva (Phonograms) Convention: [308] Slovenia (54);

Brussels (Satellites) Convention: [309] Portugal, Trinidad and Tobago (21);

Nairobi Treaty: [310] Poland (37);

Strasbourg Agreement: [311] Canada, Cuba, Malawi, Trinidad and Tobago (21);

Nice Agreement: [312] Estonia, Guinea, Trinidad and Tobago, Turkey (48);

Locarno Agreement: [313] China, Estonia, Guinea, Trinidad and Tobago (28);

Vienna Agreement: [314] Guinea (8);

Patent Cooperation Treaty (PCT): [315] Bosnia and Herzegovina, Cuba, Israel, Saint Lucia, Turkey (87);

Madrid Protocol: [316] Czech Republic, Democratic People's Republic of Korea, Denmark, Finland, Germany, Monaco, Norway (12);

Hague Agreement: [317] Bulgaria (26);

Trademark Law Treaty: [318] Czech Republic, Monaco, Republic of Moldova, Sri Lanka, Ukraine, United Kingdom of Great Britain and Northern Ireland (6);

Eurasian Patent Convention; 319 Armenia, Kyrgyzstan, Republic of Moldova (9).

(*h*) INTERNET

In September 1996, WIPO opened its own web site on the Internet. The site contains, among other things, general information on WIPO, its catalogue of publications, the status of membership of WIPO and the treaties administered by it. In December 1996, on the occasion of the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, all conference documents, press releases and texts of the treaties and statements which were adopted by the Conference were made available through the Internet.

11. INTERNATIONAL FUND FOR AGICULTURAL DEVELOPMENT

(*a*) MEMBERSHIP

At its nineteenth session (17-18 January 1996), the Governing Council approved the non-original membership IFAD of the Republic of Moldova and South Africa, and decided that both States should be classified as members of category III in accordance with articles 3.2 (*b*), 3.3 (*a*), 4.2 (*b*) and 13.1 (*c*) of the 1976 Agreement Establishing IFAD[320] 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

At its nineteenth session, the Governing Council, adopted on 17 January 1996, resolution 93/XIX on the Amendment of Governing Council Resolutions 86/XVIII and 87/XVIII.[321] Resolution/XVIII, was adopted on 26 January 1995 on the Amendment of the Agreement Establishing IFAD, the By-laws for the Conduct of Business of IFAD and other Basic Legal Instruments of the Fund, was adopted on 26 January 1995. Resolution 87/XVIII, on the Fourth Replenishment of IFAD's Resources, was adopted on 26 January 1995.

Resolution 93/XIX amended paragraph VIII(*b*) of resolution 86/XVIII as follows (the deleted text is placed between square brackets, and the added text is in italics):

> Nothwithstanding anything specified to the contrary above, the election of members and alternate members to the Executive Board at the annual session of the Governing Council following or coinciding with the completion of resolution 87/VXIII shall be conducted in accordance with the amendments to the Agreement Establishing IFAD, the By-laws for the Conduct of Business of IFAD, the Rules and Procedure of the Governing Council and Governing Council resolution 77/2.

The resolution also amended paragraph III of resolution 87/XVIII as follows (the deleted text is placed between square brackets and the added text is in italics.

> In view of the urgency of completing the Replenishment, [t]he Executive Board, taking into account the report of the President of IFAD, is requested to take action at the earliest possible time to complete this resolution in accordance with its provisions, including the allocation of the amounts pledged contributions in attachment A hereto. The Executive Board shall take such action only at the moment that pledges shall have been received equaling at least ninety per cent (90%) of the four hundred and twenty million dollars (US$ 420,000,000) target of the former category I member countries and eighty-five per cent (85%) of the combines one hundred and fifty million dollars (US$ 150,000,000) target of the former category II and III member countries. In the event that such pledges do not reach the above-mentioned target levels, the President shall convene a meeting of the Consultation at an appropriate time. The Consultation shall then recommend what further action shall be taken."

Resolution 86/XVIII required amendment because its entry into force was dependent upon completion of resolution 87/XVIII; as resolution 86/SVIII had not entered into force by the nineteenth session of the Governing Council, the date of which the new composition of, and system for electing members to, the Executive Board needed to be prolonged.

Resolution 87/XVIII had not been "completed" by the scheduled date of the nineteenth session of the Governing Council; as such, it needed to be extended.

(*c*) IFAD'S LENDING TERMS AND CONDITIONS

At its nineteenth session, the Governing Council, on 18 January 1996, adopted, resolution 94/XIX on the Amendment of the Lending Policies and Criteria. The amendment changes paragraph 33 (*b*) of IFAD's Lending Policies and Criteria as follows (the deleted text is placed between square brackets and the added text is in italics)"

33. The Executive Board shall:

(*b*) decided, annually, the rate of interest to be applied, respectively, to loans on intermediate and ordinary terms. For that purpose, it shall 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 July of each year.

The above-mentioned amendment to the Lending Terms and Criteria entered into force immediately upon its adoption and came into effect as from 1 January 1996.

The purpose of resolution 94/XIX is to allow IFAD to set its reference rate of interest for each calendar year on the basis of the International Bank for Reconstruction and Development's interest rate for the immediately preceding period of July-December. This modification allows for simplification of administration procedures and for IFAD's borrowing member States to be notified in advance of the rate that will apply in any calendar year.

(*d*) PROJECT SUPERVISION

After having considered the follow-up report on project supervision, the Governing Council, at its nineteenth session, decided to request the Executive Board at its fifty-seventh session to consider draft terms of reference for the review of supervision-related issues.

The Executive Board, at its fifty-seventh session (17-18 April 1996), endorsed the terms of reference contained in the Policy Paper on Supervision Issues for IFAD-Financed Projects: Scope and Organization of a Joint Review with the Cooperating Institutions." The Executive Board suggested that the terms of reference should be further elaborated, and that the final recommendations form the review process should be submitted to it at its fifty-ninth session in December 1996.

The Executive Board, at its fifty-ninth Session (4-5 December 1996), considered the report of the Joint Review on Supervision Issues for IFAD-financed Projects and recommended forwarding the report to the Governing Council at its twentieth session along with a brief summary of the Executive Board's comments, including the reservation of several Executive Board Directors on the recommendation to have IFAD undertake direct supervision of a small number of projects: some Directors felt that direct supervision by IFAD should not be undertaken before efforts to improve the existing system were made.

(e) Cooperation Agreements

The Executive Board, at its fifty-seventh session, approved the establishment of two Cooperation Agreements: one with the African Export-Import Bank (Afreximbank), and one with the Permanent Interstate Committee for Drought Control in the Sahel (CILSS).

12. WORLD TRADE ORGANIZATION

(a) Membership

During 1996, the following nine States became original members pursuant to article XI of the 1994 Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement):[322] Fiji, Haiti, Benin, Rwanda, Solomon Islands, Chad, Gambia, Angola and Niger. In addition, Qatar, Ecuador, St.Kitts and Nevis, Grenada, United Arab Emirates, Papua New Guinea and Bulgaria acceded to the WTO Agreement, making the total membership at the end of the year 128.

(b) Dispute settlement

In December 1996, the Dispute Settlement Body (DSB) adopted the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes.[323]

During 1996, 39 requests for consultations were received pursuant to article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and a corresponding provision in the Agreement on Textiles and Clothing.[324] The DSB established panels regarding the following cases:

Brazil – Measures Affecting Desiccated Coconut, complaint by the Philippines[325]

United States – Restriction on Imports of Cotton and Man-Made Fibre Underwear, complaint by Costa Rica[326]

United States – Measures Affecting Imports of Women's and Girls' Wool Coats, complaint by India[327]

United States – Measure Affecting Imports of Woven Wool Shirts and Blouses, complaint by India[328]

European Communities – Regime for the Importation, Sale and Distribution of Bananas, complaints by Ecuador, Guatemala, Honduras, Mexico and the United States[329]

European Communities – Measures Concerning Meat and Meat Products (Hormones), complaint by the United States[330] and Canada[331]

Canada – Certain Measures Concerning Periodicals, complaint by the United States[332]

Japan – Measures Affecting Consumer Photographic Film and Paper, complaint by the United States[333]

United States – The Cuban Liberty and Democratic Solidarity Act, complaint by the European Communities[334]

India – Patent Protection for Pharmaceutical and Agricultural Chemical Products, complaint by the United States[325]

During 1996, the DSB adopted panel and Appellate Body reported on the following cases:

United States – Standards for Reformulated and Conventional Gasoline, complaints by Venezuela[336] and Brazil[337]

Japan – Taxes on Alcoholic Beverages, complaints by the European Communities,[338] Canada[339] and the United States of America[340]

13. INTERNATIONAL ATOMIC ENERGY AGENCY

(*a*) PRIVILEGES AND IMMUNITIES

During 1996, the only change in the status of the 1959 Agreement on the Privileges and Immunities of the International Atomic Energy Agency[341] was that the Czech Republic withdrew its reservation. At the end of 1996, there were 65 parties.

(*b*) LEGAL INSTRUMENTS

Convention on the Physical Protection of Nuclear Material, 1979[342]

During 1996, Ecuador, Monaco, the former Yugoslav Republic of Macedonia and Tajikistan adhered to the Convention. By the end of the year, there were 57 parties.

Convention on Early Notification of a Nuclear Accident, 1986[343]

During 1996, the former Yugoslav Republic of Macedonia adhered to the Convention. By the end of the year, there were 76 parties.

Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency,[344] *1986*

In 1996, the former Yugoslav Republic of Macedonia adhered to the Convention. By the end of the year, there were 72 parties.

Vienna Convention on Civil Liability for Nuclear Damage, 1963[345]

During 1996, Ukraine acceded to, and the Russian Federation signed the Convention. By the end of the year, there were 27 parties.

Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention Paris Convention in Third Party Liability in the Field of Nuclear Energy of 1960,[326] *1988*

During 1996, the status of the Convention remained unchanged, with 20 parties.

Convention on Nuclear Safety,[347] *1994*

The Convention on Nuclear Safety entered into force on 24 October 1996. By the end of 1996, there were 65 signatories, and 32 States had consented to be bound to the Convention, namely: Australia, Bangladesh, Bulgaria, Canada, Chile, China, Croatia, Czech Republic, Finland, France, Hungary, Ireland, Japan, Latvia, Lebanon, Lithuania, Mali, Mexico, Netherlands, Norway, Poland, Republic of Korea, Romania, Russian Federation, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland.[348]

Extension of the African Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology[349] *(AFRA), 1990*

In 1996, the Libyan Arab Jamahiriya and Mali accepted the extension of the Agreement, making a total of 20 parties.

Agreement to Extend the Regional Cooperative Agreement for Research, Development and Training Related to Nuclear Science and Technology, 1987 (RCA)[350]

During 1996, the status of the Agreement remained unchanged, with 17 parties.

(*c*) Safeguards Agreements[351]

During 1996, Safeguards Agreements pursuant to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons[352] entered into force with Dominica[353], Monaco,[354] and St. Kitts and Nevis[355] Austria acceded to the Non-Proliferation Treaty Safeguards Agreement between the non-nuclear-weapon States of Euratom, Euratom and the Agency.[356] Two additional Safeguards Agreements pursuant to the Non-Proliferation Treaty were concluded with Algeria and the Czech Republic, but have not yet entered into force.

Safeguards Agreements pursuant to the Non-Proliferation Treaty and the 1967 Treaty of Taltelolco[357] entered into force with Antigua and Barbauda,[358] Grenada[359] and Barbados.[360].

A project agreement with Nigeria covering the supply of a research reactor and enriched uranium also entered into force in 1996.[361]

[348] For the United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man.

An agreement through an exchange of letters was concluded between Chile and the Agency[362] confirming that the Safeguards Agreement concluded pursuant to the Treaty of Tlatelolco satisfied the obligations of Chile under article III of the Non-Proliferation Treaty. An agreement through an exchange of letters was concluded between St. Lucia and the Agency[363] confirming that the Safeguards Agreement concluded pursuant to the Non-Proliferation Treaty satisfied the obligations of St. Lucia under article 13 of the Treaty of Tlatelolco.

A protocol suspending the application of safeguards under the Safeguards Transfer Agreement relating to an agreement between the Agency, Brazil and the United States of America[364] entered into force. A similar protocol relating to a bilateral agreement between Argentina and the United States was signed, but has not entered into force.

By the end of 1996, there were 214 Safeguards Agreements in force with 131 States, 111 of which had been concluded pursuant to the Non-Proliferation Treaty and/or the Tlatelolco Treaty with 114 non-nuclear-weapon States. Voluntary offer agreements are in force with all five nuclear-weapon States.

(*d*) Liability for nuclear damage

In 1996, the Standing Committee on Liability for Nuclear Damage held three sessions, during which it resolved most of the outstanding issues regarding both the draft protocol to amend the Vienna Convention and the draft convention on supplementary funding. In particular, experts agreed on such important issues as the amounts of liability, definition of damage and related provisions, structure of supplementary funding, as well as phasing-in mechanisms which would allow a State to join the revised Vienna Convention and Convention on Supplementary Funding with interim, lower amounts of liability.

At its sixteenth session, in October 1996, the Standing Committee prepared the full texts of both drafts instruments. Only a few provisions remained outstanding in the draft Supplementary Funding Convention.

The Standing Committee concluded that, as a package, each text reflected what was possible to achieve in the Committee without further guidance. It was agreed that the texts and the substantive package they reflected should be referred to Governments for detailed scrutiny. To take into account the views of Governments thereof, a final meeting of the Standing Committee was scheduled for February 1997, when the Committee expected to adopt final texts for submission to the Board of Governors so that the latter could then take a decision regarding the convening of a diplomatic conference later in the year.

(*e*) Safety of radioactive waste management

The Open-ended Group of Legal and Technical Experts on a Convention on the Safety of Radioactive Waste Management met three times in 1996. The Group agreed on most of the technical aspects of the Convention and made considerable progress regarding some specific elements, such as: the subject of spent fuel, transboundary movement of spent fuel or radioactive waste and the relation of the draft Convention with the Convention on Nuclear Safety.

It is expected that the draft text of the Convention will be put before a Diplomatic Conference in 1997.

NOTES

[1] For detailed information, see The United Nations Disarmament Yearbook, vol. 21: 1996 (United Nations publication, Sales No. 97.IX.1).

[2] A/50/1027.

[3] General Assembly resolution 50/245.

[4] The bilateral negotiation known as strategic arms reduction talks (START), conducted by the Russian Federation and the United States of America, led to the signing of two treaties: START I and START II. The former, signed on 31 July 1991, provides for a significant reduction of the Russian and United States strategic nuclear weapons over seven years. A letter signed on 3 January 1993, provides inter alia, for the reduction of strategic nuclear workheads to no more than 3,000 to 3,500 each by 2003.

[5] A/51/218; see also chap. VII of this Yearbook for the text of the opinion.

[6] See Status of Multilateral Arms Regulation and Environment Agreements, 4th edition: 1992, vol. 1 93.IX.1 (Vol. 1)

[7] Adopted by a recorded vote of 167 to none, with two abstentions.

[8] Convention to ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region. Signed at Waigani, Papeile, New Guina, on 16 September 1995.

[9] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biologicak) and Toxin Weapons and on their Destruction: General Assembly resolution 2826 (XXVI), annex.

[10] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction: Document CD/CW/WP.400/Rev.1.

[11] Adopted by a recorded vote of 165 to none with 7 abstentions.

[12] League of Nations, Treaty Series, vol. XCIV (1929), No. 2138.

[13] The United Nations Register of Conventional Arms was established in 1992 for the purpose of enhancing levels of transparency regarding arms transfers. During 1996, 134 States participated in the Register.

[14] 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: See Status of Multilateral Arms Regulation...(see note 5 above).

[15] For the report of the Subcommittee, see A/AC.105/639.

[16] A/AC.105/C.2/L.202.

[17] For the report of the Committee, see Official Records of the General Assembly, Fifty-first Session, Supplement No. 20 (a51/20).

[18] A/51/276.

[19] See Report of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Vienna, 9-21 August 1982 and corrigenda (A/CONF.101/10 and Corr. 1 and 2).

[20] Official Records of the General Assembly, Fifty-first Session Supplement No. 20 (A/51/20).

[21] 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 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 277 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).

[22] Official Records of the General Assembly, Fifty-first Session, Supplement No. 1 (A/51/1/).

[23] *Official Records of the Security Council, Fifty-first year, Resolutions and decisions of the Security Council, 1996*, document S/PRST/1996/13.

[24] A/51/130 and Corr.1.

[25] A/51/350.

[26] Report of the International Conference on Population and Development, Cairo, 5-13 September 1994 (United Nations publication, Sales No. E 95. XIII.18), chap. I, resolution I, annex.

[27] 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.

[28] Ibid. annex 1.

[29] A/51/420.

[30] Supra note 28.

[31] UNEP/Bio. Div/N.7-INC.5/4.

[32] See A/51/312.

[33] Ibid. annex II, decision II/10.

[34] A/AC.241/15/Rev.3.

[35] A/51/186-E/1996/80.

[36] A/51/116, annex 1, appendix II.

[37] Ibid., annex II.

[38] Decision 1/CP.3 of the Conference of the Parties to the Convention at its first session. See FCCC/CP/1996/15/Add.1.

[39] Ibid., annex.

[40] E/CN.15/1996/5.

Ref 41-47: See pp 243-244

[41] Resolution 50/6.

[42] Resolution 49/60, annex.

[43] See resolution 49/159.

[48] A/51/327.

[49] See A/49/748, annex, sect. I.A.

[50] A/CONF.169/16.

[51] United Nations, Treaty Series, vol. 520, p. 151.

[52] Ibid., vol. 1019, p. 175.

[53] Ibid., vol. 976, p. 3.

[54] Ibid., p. 105.

[55] E/CONF.82/15 and Corr.2; United Nations publication (Sales No.E.91.XI.6).

[56] See Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987 (United Nations publication, Sales No. E.87.I.18), chap. I, sect. B.

[57] Ibid., sect. A.

[58] Resolution S-17/2, annex.

[59] A/45/262, annex.

[60] See A/49/139-E/1994/57.

[61] See A/49/748, annex, sect. I.A

[62] A/51/129-E/1996/53, A/51/436, A/51/437 and A/51/469.

[63] United Nations, Treaty Series, vol. 993, p. 3.

[64] Ibid., vol. 999, p. 171.

[65] Ibid.

[66] General Assembly resolution 44/128, annex.

[67] Resolution 2106 A (XX), annex; United Nations, Treaty Series, vol. 660, p. 195.

[68] Official Decade of the General Assembly, Fifty-first Session, Supplement No. 18 (A/51/18).

[69] A/51/435.

[70] Resolution 3068 (XXVIII) annex; United Nations, Treaty Series, vol. 1015, p. 243.

[71] Resolution 34/180, annex; United Naitons, Treaty Series, vol. 1249, p. 13.

[72] A/CONF. 157/24 (Part I), chap. III.

[73] Official Decade of the General Assembly, Fiftieth Session Supplement No. 38 (A/50/38)

[74] Ibid., Fifty-first Session, Supplement No. 38 (A/51/38).

[75] Official Records of the Economic and Social Council, 1996, Supplement No. 6 (E/1996/26), annex III.

[76] A/51/227 and Corr. 1.

[77] General Assembly res 39/46, annex; United Nations, Treaty Series, vol. 1465, p. 85.

[78] Official Records of the General Assembly, Fifty-first Session, Supplement No. 44 (A/51/44).

[79] General Assembly resolution 44/25, annex.

[80] General Assembly resolution 45/158, annex.

[81] General Assembly resolution A/51/415.

[82] Official Records of the General Assembly Fifty-first Session, Supplement No. 36 (A/51/36).

[83] General Assembly resolution 217 A (III).

[84] A/51/425.

[85] A/51/482, annex.

[86] A/51/555.

[87] A/51/457 annex, annex.

[88] United Nations, Treaty Series, vol. 189, p. 137

[89] Ibid., vol. 606, p. 267

[90] Ibid., vol. 360, p. 117.

[91] Ibid., vol. 989, p. 175.

[92] Official Records of the General Assembly, Fifty-first Session, Supplement No. 12, (A/51/12).

[93] A/51/12/Add. 1 and Corr.

[94] A/51/341.

[95] A/51/367.

[96] A/51/329.

[97] A/51/454.

[98] Decision 51/409; A/51/292-S/1996/665; Official Records of the Security Council, Fifty-first Year, Supplement for July, August and September 1996, document S/1996/665.

[99] Decision 51/410; A/51/399-S/1996/778, annex; Official Records of the Security Council, Fifty-first Year, Supplement for July, August and September 1996, document S/1996/778.

[100] For a summary version of the report, see A/51/451 annex.

[101] 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.

[102] For detailed information, see the 1996 report of the Secretary-General agenda item on the "law of the sea", A/51/645 and Add. 1 & 2

[103] Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publication, Sales No. E.93,1.8 and corrigenda, vol I: Resolutions Adopted by the Conference, resolution 1, annex II.

[104] See Official Records of the Economic and Social Council, 1996, Supplement No. 8 (E/1996/28), chap. I, sect. A, para. 1.

[105] Official Records of the General Assembly, Fifty-first Session, Supplement No. 3, (A/51/3/Rev. 1), chap. V, sect B.1, para, 122, resolution 1996/1.

[106] A/51/116, annex I, appendix II, and annex II.

[107] General Assembly resolution 48/263, annex.

[108] A/CONF. 164/37; see also A/50/550, annex I.

[109] A/51/383.

[110] A/51/404.

[111] For the composition of the Court, see General Assembly decision 51/308.

[112] As at 31 December 1996, 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, had increased by one, bringing the total to 61.

[113] For detailed information, see I.C.J. Yearbook, 1995-1996, No. 50, and I.C.J. Yearbook, 1996-1997, No. 51.

[114] I.C.J. Reports 1996, p. 9.

[115] I.C.J. Reports 1995, p. 83.

[116] I.C.J. Reports 1996, p. 6.

[117] Ibid., p. 800.

[118] Ibid., p. 803.

[119] United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, p. 28, para. 54.

[120] I.C.J. Reports 1996, pp. 822-841, 842-846, 847-861, 862-863 and 864-873.

[121] Ibid., pp. 874-889 and 890-900.

[122] Ibid., p. 902.

[123] Ibid., p. 595.

[124] Ibid., pp. 625-630.

[125] Ibid., pp. 631-632.

[126] Ibid., p. 633.

[127] Ibid., pp. 634-639, 640-655 & 656-657.

[128] Ibid., pp. 658-795.

[129] Ibid., p. 797.
[130] Ibid., p. 3.
[131] Ibid., p. 13
[132] Ibid., pp. 26-27, 28, 29 and 30.
[133] Ibid., p. 31.
[134] Ibid., pp. 32-34.
[135] Ibid., p. 35-36.
[136] I.C.J. Reports 1995, p. 87.
[137] I.C.J. Reports 1996, p. 58.
[138] Ibid., p. 61.
[139] Ibid., p. p. 63.
[140] Ibid., p. 66.
[141] I.C.J. Reports 1975, p. 18, para. 15.
[142] I.C.J. Reports 1996, pp. 86 & 87.
[143] Ibid., pp.88-96.
[144] Ibid., pp. 97-100, 101-171 & 172-224.
[145] Ibid., p. 236.
[146] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 18, para. 15.
[147] Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 71.
[148] Nicaragua v. United States of America, I.C.J. Reports 1986, p. 94, para. 176.
[149] I.C.J. Reports 1996, pp. 268-274; 275-276, 277-278, 279-281 and 282-286.
[150] Ibid., pp. 287-293, 294-304 and 305-310.
[151] Ibid., pp. 311-329, 330-374, 375-428, 429-555, 556-582 & 583-593.
[152] Official Records of the General Assembly, Fifty-first Session, Supplement No. 4 (A/51/4).]
[153] For the membership of the Commission, see Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 (A/51/10), chap. I, sect. A.
[154] For detailed information, see Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 and Corr. (A/51/10 and Corr. 1).
[155] A/CN.4/L.522 and Corr. 1.
[156] A/CN.4/476 and Corr. 1 and Add. 1.
[157] For the report of the Drafting Committee, see A/CN.4/L.524.
[158] A/CN.4/474 and Corr. 1.
[159] A/CN.4.475.
[160] A/CN.4/471.
[161] A/CN.4.477 and Add. 1.
[162] Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 (A/51/10) and corrigendum (A/51/10 and Corr. 1).
[163] For the membership of the Commission, see Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17, chap. II, sect. B.
[164] For detailed information, see Yearbook of the United Nations Commission on International Trade Law, vol. XXVII:1996.
[165] A/CN.9/423.
[166] A/CN.9/406,annex.
[167] A/CN.9/426.
[168] See A/51/17, annex I.
[169] A/CN.9/424.
[170] A/CN.9/420.
[171] Previously titled "Working Group on the New International Economic Order"
[172] A/CN.9/419 and Corr. 1 and A/CN.9/422.
[173] Official Records of the General Assembly, Fiftieth Sessions, Supplement No. 17 (A/50/17), paras. 401-404.
[174] Also known as the 1958 New York Convention.
[175] A/CN.9/SER.C/ABSTRACTS/7 and 8.
[176] A/CN.9/SER.C/INDEX/1.
[177] A/CONF. 97/18.
[178] Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17).
[179]The Commission suggests the following text for States that might wish to limit the applicability of this Law to international data messages:
"This Law applies to a data message as defined in paragraph 1 of article 2 where the data message relates to international commerce."

[180]This Law does not override any rule of law intended for the protection of consumers.

[181]The Commission suggests the following text for States that might wish to extend the applicability of this Law:

"This Law applies to any kind of information in the form of a data message, except in the following situations:[...]".

[182]The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

[183] A/51/215 and Corr. 1 and Add. 1.

[184] United Nations, Treaty Series, Vol. 1125, pp. 3 and 609.

[185] Ibid, vol. 75, p. 3.

[186] A/48/742, annex.

[187] A/51/257 and Add. 1.

[188] A/51/278 and Add. 1.

[189] (A/C.6/51/SR.48).

[190] General Assembly resolution 51/157, annex.

[191] A/15/278, para 91.

[192] See Carnegie Endowment for International Peace, The Hague Conventions and Declarations of 1899 and 1907 (New York, Oxford University press, 1915).

[193] Ibid.

[194] Official Records of the General Assembly, Fifty-first Session, Supplement, No. 26 (A/51/21).

[195] United Nations, Treaty Series, vol. I, p. 15.

[196] Ibid., vol. 11, p. 11.

[197] A/C.6/51/L.3.

[198] Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/40/10), para. 91.

[199] Ibid., para. 90.

[200] Ibid., Fiftieth Session, Supplement No. 22 (A/50/22).

[201] See A/AC.244/1 and Add. 1-4.

[202] Official Records of the General Assembly, Fifty-first Session, Supplement No. 22 (A/51/22), vols. I and II.

[203] 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.

[204] A/50/60-S/24111; see Official Records of the Security Council, Fiftieth Year, Supplement for January, February and March 1995, document S/1995/1.

[205] See Official Records of the Security Council, Fiftieth Year, Resolutions and Decisions of the Security Council, 1995, document S/PRST/1995/9.

[206] A/48/573-S/26705; see Official Records of the Security Council, Forty-eighth Year, Supplement for October, November and December 1993, document S/26705.

[207] See Official Records of the Security Council, Forty-seventh Year, Supplement for October, November and December 1992, S/25306.

[208] A/49/356, A/50/423 and A/51/356.

[209] Official Records of the General Assembly, Forty-ninth Session, Supplement No. 33 (A/49/33).

[210] Ibid., Fiftieth Session, Supplement No. 33 (A/50/33).

[211] Ibid., Fifty-first Session, Supplement No. 33 (A/51/33).

[212] A/50/361.

[213] A/51/317.

[214] Official Records of the General Assembly, Fiftieth Session, Supplement No. 47, (A/50/47).

[215] Supplement No. 33 (A/51/33).

[216] A/51/317.

[217] Official Records of the General Assembly, Fifty-first Session, Supplement No. 33 (A/51/33).

[218] Ibid., para. 47.

[219] A/48/573-S/26705 (see Official Records of the Security Council, Forty-eighth Year, Supplement for October, November and December 1993), A/49/356, A/50/60-S/1995/1 (see Official Records of the Security Council, Fiftieth Year, Supplement for January, February and March 1995), A/50/423, A/50/361 and A/51/317.

[220] A/50/1011.

[221] See A/C.6/51/SR.5.

[222] A/51/336 and Add. 1.

[223] A/51/261, annex.

[224] See A/51/336, para. 57.

[225] United Nations, Treaty Series, vol. 704, p. 219.

[226] Ibid., vol. 860, p. 105.

[227] Ibid., vol. 974, p. 177.

[228] Ibid., vol. 1035, No. 167.

[229] General Assembly resolution 34/146, annex.

[230] United Nations, Treaty Series, vol. 1456, p. 101.

[231] ICAO document DOC 9518.

[232] IMO document SUA/CONF/15/Rev. 1.

[233] IMO document SUA/CONF/16/Rev. 2.

[234] S/22393, annex I; see Official Records of the Security Council, Forty-sixth year, Supplement for January, February and March 1991.

[235] United Nations, Treaty Series, vol. 189, p. 137.

[236] Ibids., vol. 606, p. 267.

[237] For detailed information, see Official Records of the of the General Assembly, Fiftieth Session, Supplement No. 14 (A/51/14/Rev. 1) and ibid., Fifty-Third Session, Supplement no. 14). These reports report of the Acting Executive Director of UNITAR cover the periods from 1 July 1994 to 30 June 1996 and from 1 July 1996 to 30 June 1998.

[238] A/51/554.

[239] See Official Records of the General Assembly, Fifty-first Session, Supplement No. 14.

[240] See A/51/642 and Add. 1.

[241] A/51/360.

[242] Official Bulletin of the ILO, vol. LXXIX, 1996, Series A, N° 2; 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 – Home Work, ILC, 82nd Session (1995); report V(1) and V(2), pp. 94 and 165 respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 82nd Session (1995), Record of Proceedings, No. 25; No. 27, pp. 19-45; English, French, Spanish. Second discussion – Home Work, ILC, 83rd Session (1996); report IV (1), report IV (2A), report IV (2B); pp. 17, 112 and 20 respectively; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC, 83rd Session (1996), Record of Proceedings, No. 10; Proceedings, pp. 228-232; English, French, Spanish.

[243] Official Bulletin of the ILO, vol. LXXIX, 1966, Series A, N° 3; 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 – Revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), Tripartite Meeting on Maritime Labour Standards, Geneva, November 1994; report I, 66 p., English, French, Spanish. See also report TMMLS/1994/14; English, French, Spanish. Second discussion – Revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), ILC, 84th Session (Maritime); report I, 41 p. Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC 84th Session (Maritime) (1996), Record of Proceedings, No. 4; Proceedings, pp. 40-45; English, French, Spanish.

[244] Official Bulletin of the ILO, vol. LXXIX, 1966, Series A, N° 3; 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 – Revision of the Placing of Seamen Convention, 1920 (No. 9), Tripartite Meeting on Maritime Labour Standards, Geneva, November 1994; report III, 47 p.; English, French, Spanish. See also report TMMLS/1994/12; English, French, Spanish. Second discussion – Revision of the Placing of Seamen Convention, 1920 (No. 9), ILC, 84th Session (Maritime) (1996); report III, 37 p.; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC 84th Session (Maritime) (1996), Record of Proceedings, No. 7, Proceedings, pp. 14-21; English, French and Spanish.

[245] Official Bulletin of the ILO, vol. LXXIX, 1966, Series A, N° 3; 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 – Revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and Recommendation, 1958 (No. 109), Tripartite Meeting on Maritime Labour Standards, Geneva, November 1994; report II, 71 p.; English, French, Spanish. See also report TMMLS/1994/15; English, French, Spanish. Second discussion-Revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), and Recommendation, 1958 (No. 109), ILC, 84th Session (Maritime); report II, 76 p.; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC 84th Session (Maritime) (1996), Record of Proceedings, No. 6; Proceedings, pp. 22-31 and 34-39; English, French, Spanish.

[246] Official Bulletin of the ILO, vol. LXXIX, 1966, Series A, N° 3; 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 – Partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), Tripartite Meeting on Maritime Labour Standards, Geneva, November 1994; report IV, 19 p.; English, French, Spanish. See also Report TMMLS/1994/14; English, French, Spanish. Second discussion – Partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), ILC, 84th Session (Maritime) (1996); report IV, 19 p.; Arabic, Chinese, English, French, German, Russian, Spanish. See also ILC 84th Session (Maritime) (1996), Record of Proceedings, No. 5, Proceedings, pp. 45-49; English, French, Spanish.

[247] The report has been published as report III to the 85th session of the Conference (1997) and comprises two volumes: vol. 1A, General report and observations concerning particular countries (report III (Part 1A), 469 p; English, French, Spanish, and vol. 1B, General survey of the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978 (report III (Part 1B), 102 p.; English, French, Spanish.

[248] GB.265/13/1.

[249] GB.265/13/2.

[250] GB.265/13/3.

[251] GB.265/13/4.

[252] GB.266/9/2.

[253] GB.266/9/3.

[254] GB.267/16/1.

[255] GB.267/16/3.

[256] GB.267/16/4.

[257] GB.267/16/2.

[258] Official Bulletin of the ILO, vol. LXXIX, 1996, series B, No. 1.

[259] Ibid., vol. LXXIX, 1996, Series B, No. 2.

[260] Ibid., vol. LXXIX, 1996, Series B, No. 3.

[261] GB.265/WP/SDL/1/1; GB.265/WP/SDL/1/2; GB.265/WP/SDL/1/3; GB.265/11.

[262] GB.267/WP/SDL/1/1; GB.267/WP/SDL/1/2; GB.267/WP/SDL/1/3;GB.267/WP/SDL/1/4; GB.267/WP/SDL/2; GB.267/WP/SDL/3.

[263] GB.265/LILS/WP/PRS/1; GB.265/LILS/WP/PRS/2; GB.265/LILS/5; GB.265/8/2.

[264] GB.267/LILS/WP/PRS/1; GB.267/LILS/SP/PRS/2; GB.267/LILS/4/1; GB.267/LILS/4/2; GB.267/9/2.

[265] GB.265/LILS/7; GB.265/8.

[266] GB.267/LILS/5; GB.267/9/2.

[267] GB.265/13/5.

[268] Official Bulletin of the ILO, vol. LXXIX, 1996, Series A, No. 3.

[269] United Nations, Treaty Series, vol. 1927, no. 32888.

[270] Ibid., vol., 1458, p. 3.

[271] Ibid., vol. 249, p. 215.

[272] The Inspection Panel, Annual Report August 1, 1996 to July 31, 1997, published for the Inspection Panel of the World Bank, Washington, DC, 1997.

[273] United Nations, Treaty Series, vol. 1508, p. 100.

[274] Ibid., vol. 575, p. 159.

[275] The official name of Zaire was changed to Democratic Republic of the Congo on 17 May 1997.

[276] The five successor states of the Socialist Federal Republic of Yugoslavia are Federal Republic of Yugoslavia (Serbia and Montenegro), Bosnia and Herzegovina, Republic of Croatia, Republic of Slovenia and the former Yugoslav Republic of Macedonia.

[277] United Nations, Treaty Series, vol. 15, p. 295.

[278] Ibid., vol. 33, p. 261.

[279] For the report of the Legal Committee at its session in 1996, is LEG 74/13.

[280] United Nations, Treaty Series, vol. 439, p. 193.

[281] International Legal Materials, vol. 35, No. 6 (1996), p. 1406

[282] United Nations, Treaty Series, vol. 1340, p. 61.

[283] International Legal Materials, vol. 35, no. 6 (1996), p. 1433

[284] United Nations, Treaty Series, vol. 1456, p. 221.

[285] IMO document LEG/CONF.8/10

[286] United Nations, Treaty Series, vol. 1463, p. 19.

[287] Ibid., p. 137.

[288] Ibid., p. 120.

[289] Ibid, vol. 1869, p. 299.

[290] WIPO publication no. 225

[291] League of Nations, Treaty Series, vol. 74, p. 341.

[292] International Legal Materials, vol. 36 (1997), p. 65 See chap. IV of this Yearbook for the text of the Treaty.

[293] Ibid., p. 76. See chap. IV of this Yearbook for text of Treaty.

[294] United Nations, Treaty Series, vol. 1160, p. 231.

[295] WIPO publication No. 464.

[296] WIPO publication No. 832.

[297] WIPO publication No. 223.

[298] WIPO publication No. 204.

[299] 1891 Paris Convention for the Protection of Industrial Property (last amended 1979), United Nations, Treaty Series, vol. 828, p. 107.

[300] WIPO publications No. 222.

[301] 1883 Paris Convention for the Protection of Industrial Property (last amended 1979), United Nations, Treaty Series, vol. 828, p. 107.

[302] International Legal Materials, vol. 35 (1996), p. 754.

[303] 1967 Convention establishing the World Intellectual Property Organization: United Nations, Treaty Series, vol. 828, p. 3.

[304] See note 10 above.

[305] 1971 Berne Convention for the Protection of Literary and Artistic Works (last amended in 19798), United Nations, Treaty Series, vol. 828, p. 221.

[306] 1977 Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Potent Procedure (last amended in 1980), International Legal Materials, vol. 17, (1978), p. 285.

[307] 1961 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, United Nations, Treaty Series, vol. 496, p. 43.

[308] 1971 Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, ibid., vol. 866, p. 67.

[309] 1974 Convention relating to the Distribution of Programmes – Carrying Signals Transmitted by Satellite; ibid., vol. 1144, p. 3.

[310] 1981 Nairobi Treaty on the Protection of the Olympic Symbol. WIPO publication No. 297.

[311] 1971 Strasbourg Agreement concerning the International Patent Classification (last amended in 1979), United Nations, Treaty Series, vol. 1160, p. 483.

[312] 1957 Nice Agreement concerning the International Patent Classification (last amended in 1979), vol. 828, p. 191.

[313] 1968 Locarno Agreement Establishing an International Classification for Industrial Designs (last amended in 1979): ibid., p. 435.

[314] 1973 Vienna Agreement Establishing an International Classification (last amended in 1979), vol. 828, p. 191.

[315] See note 297 above.

[316] See note 298 above.

[317] See note 291 above.

[318] See note 290 above.

[319] See note 300 above.

[320] United Nations, Treaty Series, vol. 1059, p. 191.

[321] For resolutions 86/XVIII and 87/XVIII, see Judicial Yearbook, 1995, chap. III.B.12.
[322] *United Nations, Treaty Series, vol. 1867, p. 3; continued in vols. 1868 & 1869.*
[323] WT/DSB/RC/1.
[324] United Nations, Treaty Series, vol. 1868, p. 14.
[325] WT/DS22.
[326] WT/DS24.
[327] WT/DS32.
[328] WT/DS33.
[329] WT/DS27.
[330] WT/DS26.
[331] WT/DS48.
[332] WT/DS31.
[333] WT/DS44.
[334] WT/DS38.
[335] WT/DS50.
[336] WT/DS32.
[337] WT/DS4.
[338] WT/DS8.
[339] WT/DS10.
[340] WT/DS11.
[341] INFCIRC/9/Rev.2.
[342] INFCIRC/274/Rev.1.
[343] INFCIRC/335.
[344] INFCIRC/336.
[345] INFCIRC/500.
[346] INFCIRC/402.
[347] INFCIRC/449.
[349] INFCIRC/377.
[350] INFCIRC/167; last extended 1997.
[351] See also chap. II.B.5 (*c*) of this yearbook.
[352] United Nations, Treaty Series, vol. 729, p. 161.
[353] INFCIRC/513.
[354] INFCIRC/524.
[355] INFCIRC/514.
[356] INFCIRC/193.
[357] Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco); United Nations, Treaty Series, vol. 634, p. 281.
[358] INFCIRC/528
[359] INFCIRC/525.
[360] INFCIRC/527.
[361] INFCIRC/526.
[362] INFCIRC/476/Mod. 1.
[363] INFCIRC/379/Mod. 1.
[364] INFCIRC/110/Mod. 2.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND REALTED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

1. EUROPEAN AGREEMENT ON MAIN INLAND WATERWAYS OF INTERNATIONAL IMPORTANCE.[1] DONE AT GENEVA ON 19 JANUARY 1996[2]

European Agreement on Main Island Waterways of International Importance (AGN)

The Contracting Parties,

Conscious of the need to facilitate and develop international transport by inland waterways in Europe,

Aware of the expected increase in the international transport of goods as a result of growing international trade,

Emphasizing the important role of inland water transport, which in comparison with other modes of inland transport has economic and ecological advantages and offers spare infrastructure and vessel capacity and is therefore capable of lowering social costs and negative impacts on the environment by inland transport as a whole,

Convinced that, in order to make international inland water transport in Europe more efficient and attractive to customers, it is essential to establish a legal framework which lays down a coordinated plan for the development and construction of a network of inland waterways of international importance, based on agreed infrastructure and operational parameters,

Have agreed as follows:

Article 1

DESIGNATION OF THE NETWORK

The Contracting Parties adopt the provisions of this Agreement as a coordinated plan for the development and construction of a network of inland waterways, hereinafter referred to as the "network of inland waterways of international importance" or "E waterway network", which they intend to undertake within the framework of their relevant programmes. The E waterway network consists of inland waterways and ports of international importance as described in annexes I and II to this Agreement.

Article 2

TECHNICAL AND OPERATIONAL CHARACTERISTICS OF THE NETWORK

The network of inland waterways of international importance referred to in article 1 shall conform to the characteristics set out in annex III to this Agreement or will be brought into conformity with the provisions of this annex in future improvement work.

Article 3

ANNEXES

The annexes to this Agreement form an integral part of the Agreement.

Article 4

DESIGNATION OF THE DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 5

SIGNATURE

1. This Agreement shall be open at the Office of the United Nations in Geneva for signature by States which are members of the United Nations Economic Commission for Europe or have been admitted to the Commission in a consultative capacity in conformity with paragraphs 8 and 11 of the Terms of Reference of the Commission, from 1 October 1996 to 30 September 1997.

2. Such signatures shall be subject to ratification, acceptance or approval.

Article 6

RATIFICATION, ACCEPTANCE OR APPROVAL

1. This Agreement shall be subject to ratification, acceptance or approval in accordance with paragraph 2 of article 5.

2. Ratification, acceptance or approval shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

Article 7

ACCESSION

1. This Agreement shall be open for accession by any State referred to in paragraph 1 of article 5 from 1 October 1996 onwards.

2. Accessions shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

Article 8

ENTRY INTO FORCE

1. This Agreement shall enter into force 90 days after the date on which the Governments of five States have deposited an instrument of ratification, acceptance, approval or accession, provided that one or more waterways of the network of inland waterways of international importance link, in a continuous manner, the territories of at least three of the States which have deposited such an instrument.

2. If this condition is not fulfilled, the Agreement shall enter into force 90 days after the date of the deposit of the instrument of ratification, acceptance, approval or accession, whereby the said condition will be satisfied.

3. For each State which deposits an instrument of ratification, acceptance, approval or accession after the commencement of the period of 90 days specified in paragraphs 1 and 2 of this article, the Agreement shall enter into force 90 days after the date of the deposit of the said instrument.

Article 9

LIMITS TO THE APPLICATION OF THE AGREEMENT

1. Nothing in this Agreement shall be construed as preventing a Contracting Party from taking such action, compatible with the provisions of the Charter of the United Nations and limited to the exigencies of the situation, as it considers necessary for its external or internal security.

2. Such measures, which must be temporary, shall be notified immediately to the depositary and their nature specified.

Article 10

SETTLEMENT OF DISPUTES

1. Any dispute between two or more Contracting Parties which relates to the interpretation or application of this Agreement and which the Parties in dispute are unable to settle by negotiation or other means shall be referred to arbitration if any of the Contracting Parties in dispute so requests and shall, to that end, be submitted to one or more arbitrators selected by mutual agreement between the Parties in dispute. If the Parties in dispute fail to agree on the choice of an arbitrator or arbitrators within three months after the request for arbitration, any of those Parties may request the Secretary-General of the United Nations to appoint a single arbitrator to whom the dispute shall be submitted for decision.

2. The award of the arbitrator or arbitrators appointed in accordance with paragraph 1 of this article shall be binding upon the Contracting Parties in dispute.

Article 11

RESERVATIONS

Any State may, at the time of signing this Agreement or of depositing its instrument of ratification, acceptance, approval or accession, declare that it does not consider itself bound by article 10 of this Agreement.

Article 12

AMENDMENT OF THE AGREEMENT

1. This Agreement may be amended in accordance with the procedure specified in this article, except as provided for under articles 13 and 14.

2. At the request of a Contracting Party, any amendment proposed by it to this Agreement shall be considered by the Principal Working Party on Inland Water Transport of the United Nations Economic Commission for Europe.

3. If the proposed amendment is adopted by a two-thirds majority of the Contracting Parties present and voting, it shall be communicated by the Secretary-General of the United Nations to all Contracting Parties for acceptance.

4. Any proposed amendment communicated in accordance with paragraph 3 of this article shall come into force with respect to all Contracting Parties 3 months after the expiry of a period of 12 months following eh date of its communication, provided that during such period of 12 months no objection to the proposed amendment shall have been notified to the Secretary-General of the United Nations by a State which is a Contracting Party.

5. If an objection to the proposed amendment has been notified in accordance with paragraph 4 of this article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

Article 13

AMENDMENT OF ANNEXES I AND II

1. Annexes I and II to this Agreement may be amended in accordance with the procedure laid down in this article.

2. At the request of a Contracting Party, any amendment proposed by it to annexes I and II to this Agreement shall be considered by the Principal Working Party on Inland Water Transport of the United Nations Economic Commission for Europe.

3. If the proposed amendment is adopted by the majority of the Contracting Parties present and voting, it shall be communicated by the Secretary-General of the United Nations to the Contracting Parties directly concerned for acceptance. For the purpose of this article, a Contracting Party shall be consid-

ered directly concerned if, in the case of inclusion of a new inland waterway or port of international importance or in case of their respective modification, its territory is crossed by that inland waterway or if the considered port is situated on the said territory.

4. Any proposed amendment communicated in accordance with paragraphs 2 and 3 of this article shall be deemed accepted if, within a period of six months following the date of its communication by the depositary, none of the Contracting Parties directly concerned has notified the Secretary-General of the United Nations of its objection to the proposed amendment.

5. Any amendment thus accepted shall be communicated by the Secretary-General of the United Nations to all Contracting Parties and shall enter into force three months after the date of its communication by the depositary.

6. If an objection to the proposed amendment has been notified in accordance with paragraph 4 of this article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

7. The depositary shall be kept promptly informed by the secretariat of the Economic Commission for Europe of the Contracting Parties which are directly concerned by a proposed amendment.

Article 14

AMENDMENT OF ANNEX III

1. Annex III to this Agreement may be amended in accordance with the procedure specified in this article.

2. At the request of a Contracting Party, any amendment proposed by it to annex III to this Agreement shall be considered by the Principal Working Party on Inland Water Transport of the United Nations Economic Commission for Europe.

3. If the proposed amendment is adopted by the majority of the Contracting Parties present and voting, it shall be communicated by the Secretary-General of the United Nations to all Contracting Parties for acceptance.

4. Any proposed amendment communicated in accordance with paragraph 3 of this article shall be deemed accepted unless, within a period of six months following the date of its communication, one fifth or more of the Contracting Parties have notified the Secretary-General of the United Nations of their objection to the proposed amendment.

5. Any amendment accepted in accordance with paragraph 4 of this article shall be communicated by the Secretary-General of the United Nations to all Contracting Parties and shall enter into force three months after the date of its communication with regard to all Contracting Parties except those which have already notified the Secretary-General of the United Nations of their objection to the proposed amendment within a period of six months following the date of its communication according to paragraph 4 of this article.

6. If one fifth or more of the Contracting Parties have notified an objection to the proposed amendment in accordance with paragraph 4 of this article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

Article 15

DENUNCIATION

1. Any Contracting Party may denounce this Agreement by written notification addressed to the Secretary-General of the United Nations.

2. The denunciation shall take effect one year after the date of receipt by the Secretary-General of the said notification.

Article 16

TERMINATION

If, after the entry into force of this Agreement, the number of Contracting Parties for any period of 12 consecutive months is reduced to less than five, the Agreement shall cease to have effect 12 months after the date on which the fifth State ceased to be a Contracting Party.

Article 17

NOTIFICATIONS AND COMMUNICATIONS BY THE DEPOSITARY

In addition to such notifications and communications as this Agreement may specify, the functions of the Secretary-General of the United Nations as depositary shall be as set out in Part VII of the Vienna Convention on the Law of Treaties, concluded on 23 May 1969.

Article 18

AUTHENTIC TEXTS

The original of this Agreement, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.

DONE at Geneva on the nineteenth day of January 1996.

2. PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF MINES, BOOBY-TRAPS AND OTHER DEVICES AS AMENDED ON 3 MAY 1996 (PROTOCOL II AS AMENDED ON 3 MAY 1996) ANNEXED 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.[3] DONE AT GENEVA, 3 MAY 1996.[4]

Article I

AMENDED PROTOCOL

The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), annexed 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 ("the Convention") is hereby amended. The text of the Protocol as amended shall read as follows:

"Protocol on Prohibitions or Restrictions on the Use of Mine, Booby-Traps and Other Devices as Amended on 3 May 1996 (Protocol II as amended as 3 May 1996)

Article 1

SCOPE OF APPLICATION

1. This Protocol relates to the use on land of the mines, booby-traps and other devices, defined herein, including mines laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways.

2. This Protocol shall apply in, in addition to situations referred to in article 1 of this Convention, to situations referred to in article 3 common to the Geneva Conventions of 12 August 1949. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

3. In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Protocol.

4. Nothing in this Protocol shall be invoked for the purpose of affecting eh sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

5. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

6. The application of the provisions of this Protocol to parties to a conflict, which are not High Contracting Parties that have accepted this Protocol, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

Article 2

DEFINITIONS

For the purpose of this Protocol:

1. "Mine" means a munition placed under, on or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or vehicle.

2. "Remotely delivered mine" means a mine not directly emplaced but delivered by artillery, missile, rocket, mortar or similar means, or dropped from an aircraft. Mines delivered from a land-based system from less than 500 metres are not considered to be "remotely delivered", provided that they are used in accordance with article 5 and other relevant Articles of this Protocol.

3. "Anti-personnel mine" means a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.

4. "Booby-trap" means any device or material which is designed, constructed, or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.

5. "Other devices" means manually emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time.

6. "Military object" means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

7. "Civilian objects" are all objects which are not military objectives as defined in paragraph 6 of this article.

8. "Minefield" is a defined area in which mines have been emplaced and "mined area" is an area which is dangerous due to the presence of mines. "Phoney minefield" includes phoney minefields.

9. "Recording" means a physical, administrative and technical operation designed to obtain, for the purpose of registration in official records, all available information facilitating the location of minefields, mined areas, mines, booby-traps and other devices.

10. "Self-destruction mechanism" means an incorporated or externally attached automatically functioning mechanism which secures the destruction of the munition into which it is incorporated or externally attached automatically functioning mechanism which secures the destruction of the munition into which it is incorporated or to which it is attached.

11. "Self-neutralization" means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, a battery, that is essential to the operation of the munition.

12. "Self-deactivating" means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, a battery, that is essential to the operation of the munition

13. "Remote control" means control by commands from a distance.

14. "Anti-handling device" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with the mine.

15. "Transfer" involves, in addition to the physical movement of mines into or from national territory, the transfer of title to an control over the mines, but does not involve the transfer of territory containing emplaced mines.

Article 3

General restrictions on the use of mines, booby-traps and other devices

1. This article applies to:

(*a*) Mines

(*b*) Booby-traps; and

(*c*) Other devices.

2. Each High Contracting Party or party to a conflict is, in accordance with the provisions of this Protocol, responsible for all mines, booby-traps and other devices employed by it and undertakes to clear, remove, destroy or maintain them as specified in article 10 of this Protocol.

3. It is prohibited in all circumstances to use any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering.

4. Weapons to which this article applies shall strictly comply with the standards and limitations specified in the Technical Annex with respect to each particular category.

5. It is prohibited to use mines, booby-traps or other devices which employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations.

6. It is prohibited to use a self-deactivating mine equipped with an anti-handling device that is designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning.

7. It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians or civilian objects.

8. The indiscriminate use of weapons to which this article applies is prohibited. Indiscriminate use is any placement of such weapons:

(*a*) Which is not on, or directed against, a military object. In case of doubt as to whether an object which is normally dedicated to civilian purposes, such

as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used;

(*b*) Which employs a method or means of delivery which cannot be directed at a specific military objective; or

(*c*) Which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

9. Several clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are not to be treated as a single military objective.

10. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations. These circumstances include, but are not limited to:

(*a*) The short- and long-term effect of mines upon the local civilian population for the duration of the minefield;

(*b*) Possible measures to protect civilians (for example, fencing, signs, warning and monitoring);

(*c*) The availability and feasibility of using alternatives; and

(*d*) The short- and long-term military requirements for a minefield.

11. Effective advance warning shall be given of any emplacement of mines, booby-traps and other devices which may affect the civilian population, unless circumstances do not permit.

Article 4

RESTRICTIONS ON THE USE OF ANTI-PERSONNEL MINES

It is prohibited to use anti-personnel mines which are not detectable, as specified in paragraph 2 of the Technical Annex.

Article 5

RESTRICTIONS ON THE USE OF ANTI-PERSONNEL MINES OTHER THAN REMOTELY DELIVERED MINES

1. This article applies to anti-personnel mines other than remotely delivered mines.

2. It is prohibited to use weapons to which this article applies which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex, unless:

(*a*) Such weapons are placed within a perimeter-marked area which is monitored by military personnel and protected by fencing or other means, to ensure the effective exclusion of civilians from the area. The marking must be

of a distinct and durable character and must at least be visible to a person who is about to enter the perimeter-marked area; and

(*b*) Such weapons are cleared before the area is abandoned, unless the area is turned over to the forces of another State which accept responsibility for the maintenance of the protections required by this article and the subsequent clearance of those weapons.

3. A party to a conflict is relieved from further compliance with the provisions of subparagraphs 2 (*a*) and 2(*b*) of this article only if such compliance is not feasible due to forcible loss of control of the area as a result of enemy military action, including situations where direct enemy military action makes it impossible to comply. If that party regains control of the area, it shall resume compliance with the provisions of subparagraphs 2 (*a*) and 2 (*b*) of this article.

4. If the forces of a party to a conflict gain control of an area in which weapons to which this article applies have been laid, such forces shall, to the maximum extent feasible, maintain and, if necessary, establish the protections required by this article until such weapons have been cleared.

5. All feasible measures shall be taken to prevent the unauthorized removal, defacement, destruction or concealment of any device, system or material used to establish the perimeter of a perimeter-marked area.

6. Weapons to which this article applies which propel fragments in a horizontal arc of less than 90 degrees and which are placed on or above the ground may be used without the measures provided for in subparagraph 2 (*a*) of this article for a maximum period of 72 hours, if:

(*a*) They are located in immediate proximity to the military unit that emplaced them; and

(*b*) The area is monitored by military personnel to ensure the effective exclusion of civilians.

Article 6

RESTRICTIONS ON THE USE OF REMOTELY DELIVERED MINES

1. It is prohibited to use remotely delivered mines unless they are recorded in accordance with subparagraph 1 (*b*) of the Technical Annex.

2. It is prohibited to use remotely delivered anti-personnel mines which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex.

3. It is prohibited to use remotely delivered mines other than anti-personnel mines, unless, to the extent feasible, they are equipped with an effective self-destruction or self-neutralization mechanism and have a back-up self-deactivation feature, which is designed so that the mine will no longer function as a mine when the mine no longer serves the military purpose for which it was placed in position.

4. Effective advance warning shall be given of any delivery or dropping of remotely delivered mines which any affect the civilian population, unless circumstances do not permit.

Article 7

PROHIBITIONS ON THE USE OF BOOBY-TRAPS AND OTHER DEVICES

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use booby-traps and other devices which are in any way attached to or associated with:

(*a*) Internationally recognized protective emblems, signs or signals;

(*b*) Sick, wounded or dead persons;

(*c*) Burial or cremation sites or graves;

(*d*) Medical facilities, medical equipment, medical supplies or medical transportation;

(*e*) Children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;

(*f*) Food or drink;

(*g*) Kitchen utensils or appliances except in military establishments, military locations or military supply depots;

(*h*) Objects clearly of a religious nature;

(*i*) Historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or

(*j*) Animals or their carcasses.

2. It is prohibited to use booby-traps or other devices in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.

3. Without prejudice to the provisions of article 3, it is prohibited to use weapons to which this article applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:

(*a*) They are placed on or in the close vicinity of a military objective; or

(*b*) Measures are taken to protect civilians from their effects, for example, the posting of warning sentries, the issuing of warnings or the provision of fences.

Article 8

TRANSFER

1. In order to promote the purposes of this Protocol, each High Contracting Party:

(*a*) Undertakes not to transfer any mine the use of which is prohibited by this Protocol;

(*b*) Undertakes not to transfer any mine to any recipient other than a State or a State agency authorized to receive such transfers;

(*c*) Undertakes to exercise restraint in the transfer of any mine the use of which is restricted by Protocol. In particular, each High Contracting Party undertakes not to transfer any anti-personnel mines to States which are not bound by this Protocol, unless the recipient State agrees to apply this Protocol; and

(*d*) Undertakes to ensure that any transfer in accordance with this article takes place in full compliance, by both the transferring and the receipt State, with the relevant provisions of this Protocol and the applicable norms of international humanitarian law.

2. In the event that a High Contracting Party declares that it will defer compliance with specific provisions on the use of certain mines, as provided for in the Technical Annex, subparagraph 1 (*a*) of this article shall however apply to such mines.

3. All High Contracting Parties, pending the entry into force of this Protocol, will refrain from any actions which would be inconsistent with subparagraph 1 (*a*) of this article.

Article 9

Recording and use of information on minefields, mined areas, mines, booby-traps and other devices

1. All information concerning minefields, mined areas, mines, booby-traps and other devices shall be recorded in accordance with the provisions of the Technical Annex.

2. All such records shall be retained by the parties to a conflict, who shall, without delay after the cessation of active hostilities, take all necessary and appropriate measures, including the use of such information, to protect civilians from the effects of minefields, mined areas, mines, booby-traps and other devices in areas under their control.

At the same time, they shall also make available to the other party or parties to the conflict and to the Secretary-General of the United Nations all such information in their possession concerning minefields, mined areas, mines, booby-traps and other devices laid by them in areas on longer under their control; provide, however, subject to reciprocity, where the forces of a party to a conflict are in the territory of an adverse party, either party may withhold such information from the Secretary-General and the other party, to the extent that security interests require such withholding, until neither party is in the territory of the other. In the latter case, the information withheld shall be disclosed as soon as those security interests permit. Wherever possible, the parties to the conflict shall seek, by mutual agreement, to provide for the release of such information at the earliest possible time in a manner consistent with the security interests of each party.

3. This article is without prejudice to the provisions of article 10 and 12 of this Protocol.

Article 10

REMOVAL OF MINEFIELDS, MINED AREAS, MINES, BOOBY-TRAPS AND OTHER DEVICES AND INTERNATIONAL COOPERATION

1. Without delay after the cessation of active hostilities, all minefields, mined areas, mines, booby-traps and other devices shall be cleared, removed, destroyed or maintained in accordance with article 3 and paragraph 2 of article 5 of this Protocol.

2. High Contracting Parties and parties to a conflict bear such responsibility with respect to minefields, mined areas, mines, booby-traps and other devices in areas under this control.

3. With respect to minefields, mined areas, mines, booby-traps and other devices laid by a party in areas over which it no longer exercises control, such party shall provide to the party in control of the area pursuant to paragraph 2 of this article, to the extent permitted by such party, technical and material assistance necessary to fulfil such responsibility.

4. At all times necessary, the parties shall endeavour to reach agreement, both among themselves and, where appropriate, with other States and with international organizations, on the provision of technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil such responsibilities.

Article 11

TECHNOLOGICAL COOPERATION AND ASSISTANCE

1. Each High Contracting Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Protocol and means of mine clearance. In particular, High Contracting Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

2. Each High Contracting Party undertakes to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

3. Each High Contracting Party in a position to do so shall provide assistance for mine clearance through the United Nations system, other international bodies or on a bilateral basis, or contribute to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance.

4. Requests by High Contracting Parties for assistance, substantiated by relevant information may be submitted to the United Nations, to other appropriate bodies or to other States. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organizations.

5. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and, in cooperation with the requesting High Contracting Party, determine the appropriate provision of assistance in mine clearance or implementation of the Protocol. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required.

6. Without prejudice to their constitutional and other legal provisions, the High Contracting Parties undertake to cooperate and transfer technology to facilitate the implementation of the relevant prohibitions and restrictions set out in this Protocol.

7. Each High Contracting Party has the right to seek and receive technical assistance, where appropriate, from another High Contracting Party on specific relevant technology, other than weapons technology, as necessary and feasible, with a view to reducing any period of deferral of which provision is made in the Technical Annex.

Article 12

PROTECTION FROM THE EFFECTS OF MINEFIELDS, MINED AREAS, MINES, BOOBY-TRAPS AND OTHER DEVICES

1. Application

(*a*) With the exception of the forces and missions referred to in subparagraph 2(a)(*i*) of this article, this article applies only to missions which are performing functions in an area with the consent of the High Contracting Party on whose territory the functions are performed.

(*b*) The application of the provisions of this article to parties to a conflict which are not High Contracting Parties shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

(*c*) The provisions of this article are without prejudice to existing international humanitarian law, or other international instruments as applicable, or decisions by the Security Council of the United Nations, which provide for a higher level of protection to personnel functioning in accordance with this article.

2. Peacekeeping and certain other forces and missions

(*a*) This paragraph applies to:

(i) Any United Nations force or mission performing peacekeeping observation or similar functions in any area in accordance with the Charter of the United Nations; and

(ii) Any mission established pursuant to Chapter VIII of the Charter of the United Nations and performing its functions in the area of a conflict.

(*b*) Each High Contracting Party or party to a conflict, if so requested by the head of a force or mission to which this paragraph applies, shall:

(i) So far as it is able, take such measures as are necessary to protect the force or mission from the effects of mines, booby-traps and other devices in any area under its control;

(ii) If necessary in order effectively to protect such personnel, remove or render harmless, so far as it is able, all mines, booby-traps and other devices in that area; and

(iii) Inform the head of the force or mission of the location of all known minefields, mined areas, mines, booby-traps and other devices in the area in which the force or mission is performing its functions and, so far as is feasible, make available to the head of the force or mission all information in its possession concerning such minefields, mined areas, mines, booby-traps and other devices.

3. Humanitarian and fact-finding missions of the United Nations system

(*a*) This paragraph applies to any humanitarian or fact-finding mission of the United Nations system.

(*b*) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

(i) Provide the Personnel of the mission with the protections set out in subparagraph 2(b)(*i*) of this article; and

(ii) If access to or through any place under its control is necessary for the performance of the mission's functions and in order to provide the personnel of the mission with safe passage to or through that place:

(aa) Unless ongoing hostilities prevent, inform the head of the mission of a safe route to that place if such information is available; or

(bb) If information identifying a safe route is not provided in accordance with subparagraph (aa), so far as is necessary and feasible, clear a lane through minefields.

4. Missions of the International Committee of the Red Cross

(*a*) This paragraph applies to any mission of the International Committee of the Red Cross performing functions with the consent of the host State or States as provided for by the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

(*b*) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

(i) Provide the personnel of the mission with the protections set out in subparagraph 2(*b*)(i) of this article; and

(ii) Take the measures set out in subparagraph 3(*b*)(ii) of this article.

5. Other humanitarian missions and missions of enquiry

(*a*) Insofar as paragraphs 2, 3 and 4 of this article do not apply to them, this paragraph applies to the following missions when they are performing functions in the area of a conflict or to assist the victims of a conflict:

(i) Any humanitarian mission of a national Red Cross or Red Crescent society or of their International Federation;

(ii) Any mission of an impartial humanitarian organization, including any impartial humanitarian demining mission; and

(iii) Any mission of enquiry established pursuant to the provisions of the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

(*b*) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall, so far as is feasible;

(i) Provide the personnel of the mission with the protections set out in subparagraph 2(*b*)(i) of this article; and

(ii) Take the measures set out in subparagraph 3(*b*)(ii) of this article.

6. Confidentiality

All information provided in confidence pursuant to this article shall be treated by the recipient in strict confidence and shall not be released outside the force or mission concerned without the express authorization of the provider of the information.

7. Respect for laws and regulations

Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, personnel participating in the forces and missions referred to in this article shall:

(*a*) Respect the laws and regulations of the host State; and

(*b*) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 13

Consultations of High Contracting Parties

1. The High Contracting Parties undertake to consult and cooperate with each other on all issues related to the operation of this Protocol. For this purpose, a conference of High Contracting Parties shall be held annually.

2. Participation in the annual conferences shall be determined by their agreed Rules of Procedure.

3. The work of the conference shall include:

(*a*) Reviwe of the operation and status of this Protocol;

(*b*) Consideration of matters arising from reports by High Contracting Parties according to paragraph 4 of this article;

(*c*) Preparation for review conferences; and

(*d*) Consideration of the development of technologies to protect civilians against indiscriminate effects of mines.

4. The High Contracting Parties shall provide annual reports to the Depositary, who shall circulate them to all High Contracting Parties in advance of the conference, on any of the following matters:

(*a*) Dissemination of information on this Protocol to their armed forces and to the civilian population;

(*b*) Mine clearance and rehabilitation programmes;

(*c*) Steps taken to meet technical requirements of this Protocol and any other relevant information pertaining thereto;

(*d*) Legislation related to this Protocol;

(*e*) Measures taken on international technical information exchange, on international cooperation on mine clearance, and on technical cooperation and assistance; and

(*f*) Other relevant matters.

5. The cost of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the work of the conference, in accordance with the United Nations scale of assessment adjusted appropriately.

Article 14

COMPLIANCE

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Protocol by persons or on territory under its jurisdiction or control.

2. The measures envisaged in paragraph 1 of this article include appropriate measures to ensure the impostion of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Protocol, willfully kill or cause serious injury to civilians and to bring such persons to justice.

3. Each High Contracting Party shall also require that its armed forces issue relevant military instructions and operating procedures and that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.

4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

TECHNICAL ANNEX

1. Recording

(*a*) Recording of the location of mines other than remotely-delivered mines, minefields, mined areas, booby-traps and other devices shall be carried out in accordance with the following provisions:

(i) The location of the minefields, mined areas and areas and areas of booby-traps and other devices shall be specified accurately by relation to the coordinates of at least two reference points and the estimated dimensions of the area containing these weapons in relation to those reference points;

(ii) Maps, diagrams or other records shall be made in such a way as to indicate the location of minefields, mined areas, booby-traps and other devices in relation to reference points, and these records shall also indicate their perimeters and extent; and

(iii) For purposes of detection and clearance of mines, booby-traps and other devices, maps, diagrams or other records shall contain complete information on the type, number, emplacing method, type of fuse and life time, date and time of laying, anti-handling devices (if any) and other relevant information on all these weapons laid. Whenever feasible the minefield record shall show the exact location of every mine, except in row minefields where the row location is sufficient. The precise location and operating mechanism of each booby-trap laid shall be individually recorded.

(*b*) The estimated location and area of remotely-delivered mines shall be specified by coordinates of reference points (normally corner points) and shall be ascertained and when feasible marked on the ground at the earliest opportunity. The total number and type of mines laid, the date and time of laying and the self-destruction time periods shall also be recorded.

(*c*) Copies of records shall be held at a level of command sufficient to guarantee their safety as far as possible.

(*d*) The use of mines produced after the entry into force of this Protocol is prohibited unless they are marked in English or in the respective national language or languages with the following information:

(i) Name of the country of origin;

(ii) Month and year of production; and

(iii) Serial number or lot number.

The markings should be visible, legible, durable and resistant to environmental effects, as far as possible.

2. Specifications on detectablity

(*a*) With respect to anti-personnel mines produced after 1 January 1997, such mines shall incorporate to their construction a material or device that enables the mine to be detected by commonly-available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grammes or more of iron in a single coherent mass.

(*b*) With respect to anti-personnel mines produced before 1 January 1997, such mines shall either incorporate in their construction, or have attached prior to their emplacement, in a manner not easily removable, a material or device that enables the mine to be detected by commonly-available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grammes or more of iron in a single coherent mass.

(*c*) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraph (*b*), it may declare at the time of its notification of consent to be bound by this Protocol that it will defer compliance with sub-paragraph (*b*) for a period not to exceed 9 years from the entry into force of this Protocol. In the meantime it shall, to the extent feasible, minimize the use of anti-personnel mines that do not so comply.

3. Specification on self-destruction and self-deactivation

(*a*) All remotely-delivered anti-personnel mines shall be designed and constructed so that no more than 10% of activated mines will fail to self-destruct within 30 days after emplacement, and each mine shall have a back-up self-deactivation feature designed and constructed so that, in combination with the self-destruction mechanism, no more than one in one thousand activated mines will function as a mine 120 days after emplacement.

(*b*) All non-remotely delivered anti-personnel mines, used outside marked areas, as defined in Article 5 of this Protocol, shall comply with the requirements for self-destruction and self-deactivation stated in sub-paragraph (*a*).

(*c*) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraphs (*a*) and/or (*b*), it may declare at the time of its notification of consent to be bound by this Protocol, that it will, with respect to mines produced prior to the entry into force of this Protocol, defer compliance with sub-paragraphs (*a*) and/or (*b*) for a period not to exceed 9 years from the entry into force of this Protocol.

During this period of deferral, the High Contracting Party shall:

(i) Undertake to minimize, to the extent feasible, the use of anti-personnel mines that do not so comply; and

(ii) With respect to remotely-delivered anti-personnel mines, comply with either the requirements for self-destruction or the requirements for self-deactivation and, with respect to other anti-personnel mines comply with at least the requirements for self-deactivation.

4. International signs for minefields and mined areas

Signs similar to the example attached and as specified below shall be utilized in the marking of minefields and mined areas to ensure their visibility and recognition by the civilian population:

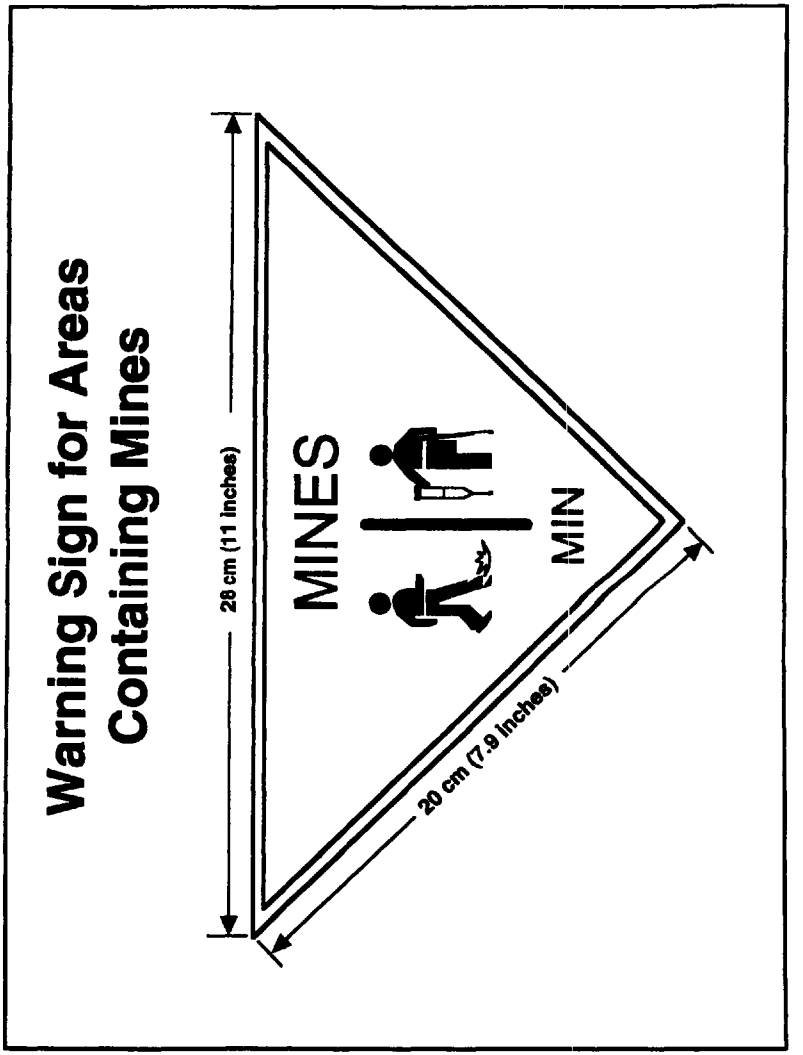
(*a*) Size and shape: a triangle or square no smaller than 28 centimetres (11 inches) by 20 centimetres (7.9 inches) for a triangle, and 15 centimetres (6 inches) per side for a square;

(*b*) Colour: red or orange with a yellow reflecting border;

(*c*) Symbol: the symbol illustrated in the Attachment, or an alternative readily recognizable in the area in which the sign is to be displayed as identifying a dangerous area;

(*d*) Language: the sign should contain the word "mines" in one of the six official languages of the Convention (Arabic, Chinese, English, French, Russian and Spanish) and the language or languages prevalent in that area; and

(*e*) Spacing: signs should be placed around the minefield or mined area at a distance sufficient to ensure their visibility at any point by a civilian approaching the area."


Warning Sign for Areas Containing Mines
28 cm (11 inches)
MINES
MIN
20 cm (7.9 inches)

Article 2

ENTRY INTO FORCE

This amended Protocol shall enter into force as provided for in paragraph 1 (*b*) of article 8 of the Convention.

3. AGREEMENT ESTABLISHING THE BANK FOR ECONOMIC COOPERATION AND DEVELOPMENT IN THE MIDDLE EAST AND NORTH AFRICA.[5] DONE AT CASABLANCA ON 28 AUGUST 1996[6]

Agreement Establishing the Bank for Economic Cooperation and Development in the Middle East and North Africa

The Contracting Parties,

Recognizing that the establishment of a lasting, just a comprehensive peace in the Middle East opens the way to a better life for millions of people in the region who have been directly affected by violence for decades, and offers hope for a dramatic improvement in the economic, social and human development of the Middle East and North Africa;

Aware that the courageous political steps taken in the peace process must be supported by decisive actions in the areas of economic and social development;

Convinced that decisive actions to promote regional economic development, and to improve the living standards of the peoples of the region, are essential in order to consolidate peace; such actions would facilitate popular participation in economic cooperation for long-term development, thus leading the region toward a new era of cooperative interaction and prosperity;

Considering the need to improve economic cooperation and trade within the region as well as to enable the region to enhance its global economic competitiveness;

Recognizing that a permanent forum for economic dialogue and financial cooperation can be an important element contributing to lasting peace and prosperity within the region;

Considering the need to strengthen international cooperation for economic advancement in the region, to accelerate the contribution of foreign and domestic investment, and to improve the management of environmental resources;

Desiring to enhance the flow to the region of capital and technology for productive and peaceful purposes with a view promoting respect for human right;

Wishing also to support the development of regional projects, particularly for the creation of an infrastructure while at all times mindful of the need to protect the environment;

Recognizing the imperative of establishing a strong private sector as a basis for achieving economic growth, alleviating poverty and improving the overall standard of living in the region;

Desiring to create a partnership between the public and private sectors through cooperation in reducing barriers to the flow of goods, services and capital, and in harmonizing policies to achieve an enabling economic environment, including the maintenance of fair and stable standards for the treatment of foreign and domestic investment; and

Convinced that a Bank for Economic Cooperation and Development in the Middle East and North Africa can play an important role in achievement of these ideals;

Have agreed as follows:

CHAPTER I

Establishment, status and purposes

Article 1

ESTABLISHMENT AND STATUS OF THE BANK

The Bank for Economic Cooperation and Development in the Middle East and North Africa (hereinafter referred to as the "Bank") is hereby established. It shall have full juridical personality and, in particular, the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings.

Article 2

PURPOSES

To further strengthen and enhance the fundamental objectives of peace, stability and development in the Middle East and North Africa, the purposes of the Bank shall be to:

(*a*) Mobilize official and private, foreign and domestic, investment and other resources to:

(i) Support projects that have a regional character, or that would have a significant beneficial impact on the region, in particular, infrastructure projects;

(ii) Support and stimulate the growth of the private sector in the region, and foster private and entrepreneurial initiative; and

(iii) Further economic growth and equitable and sustainable development to raise income levels and standards of living and support social well-being and the reduction of poverty; and

(*b*) Provide a forum to promote economic cooperation and coordination in the region and assist the regional members to integrate their respective economies into the global economy.

Article 3

COOPERATION WITH OTHER INTERNATIONAL ORGANIZATIONS

To achieve its purposes, the Bank shall work in close cooperation with all its members and, in such manner as it may deem appropriate within the terms of this Agreement, with any international organization, regional organization or other recognized organization, whether public or private, whose activities are consistent with the facilitation of economic development of, and investment in, the region.

CHAPTER II

Membership and resources

Article 4

MEMBERSHIP

(*a*) The original members are listed in Schedule A of this Agreement and are committed to:

(i) Achieving a comprehensive peace in the Middle East and supporting the peace process begun at Madrid in October 1991; and

(ii) Promoting economic cooperation within the region, including trade liberalization and the removal of trade barriers and restrictions, and integrating their respective economies with the global economy

but may be original members only if they become parties to this Agreement on or before 31 October 1997, or such later date as may be decided by the Board of Governors.

(*b*) The Board of Governors may decide by special majority to admit new members of the Bank which are committed to the principles set forth in subparagraphs (i) and (ii) of paragraph (*a*) of this article, and which may not or do not become original members in accordance with paragraph (*a*) of this Article.

Article 5

CAPITAL

(*a*) The authorized capital stock of the Bank shall be three billion, three hundred and thirty-eight million, seven hundred thousand Special Drawing Rights. The capital stock shall be divided into thirty-three million, three hundred and eighty-seven thousand shares having a par value of one hundred Special Drawing Rights each. Each share shall have a paid-in portion of twenty-five percent and a callable portion of seventy-five percent.

(*b*) Each original member of the Bank shall subscribe at par to the number of shares of capital stock set forth opposite its name in Schedule A of this Agreement, and shall pay for the paid-in portion and the callable portion of such shares in accordance with that Schedule. Each new member shall subscribe to such number of shares of capital stock on such terms and conditions as may be determined by the Board of Governors, but in no event at a price of less than par. The Board of Governors may allocate to existing members shares which are not subscribed by the latest date for becoming an original member of the Bank pursuant to paragraph (*a*) of article 4.

(*c*) The Board of Governors shall at intervals of not more than five years review the capital stock of the Bank. The Board of Governors, by special majority, may at any time increase the capital stock of the Bank. In those circumstances, each member shall have pre-emptive rights, but no member shall be obliged to subscribe to any part of an increase of capital stock.

(*d*) Shares of stock shall not be pledged or encumbered in any manner whatsoever, and they shall not be transferable except to the Bank.

Article 6

VOLUNTARY SPECIAL FUNDS RESOURCES

(*a*) To further its purposes, and mindful that concessional resources can accelerate the development of the weaker economies of regional members, the Bank may seek the voluntary contribution of Special Funds, and accept the administration of voluntarily contributed Special Funds, to be used in any manner and on any terms and conditions consistent with the agreement or agreements relating to such Funds. Agreements may provide that a Special Fund may be available for projects on a concessional or grant basis, and may be used to finance studies and consultancy services to promote economic cooperation in the region, to finance technical assistance for project preparation, to support project implementation, and to provide other assistance.

(*b*) The Special Funds resources of the Bank shall at all times and in all respects be held, used, committed, accounted for, and invested or otherwise disposed of entirely separately from ordinary resources. The full cost of administering any Special Fund shall be charged to that Special Fund. The ordinary resources of the Bank shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of activities for which Special Funds resources were originally used or committed.

Article 7

VALUATION OF CURRENCIES

Whenever it shall be necessary for the purposes of this Agreement to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Bank, after consultation with the International Monetary Fund.

CHAPTER III

Economic cooperation

Article 8

A FORUM FOR ECONOMIC COOPERATION

(*a*) The Bank shall have a Forum for Economic Cooperation (hereinafter referred to as the "Forum") composed of the regional members of the Bank.

(*b*) The purpose of the Forum shall be to enable and encourage regional members, by discussion and dialogue, and agreement where appropriate, to:

(i) Promote the efficient use of the economic resources of the region, social well-being, and economic growth and internal and external financial stability in the region, and, in particular, facilitate economic cooperation within the region;

(ii) Promote macroeconomic, sectoral and regulatory policies that create a conducive environment for entrepreneurial activity;

(iii) Coordinate and recommend regional economic priorities; and

(iv) Pursue efforts to increase and promote both intra-regional and external investment and trade in goods and services, and to promote trade and investment liberalization, inter alia, by promoting the free movement of goods, services, persons and capital in the region, and the harmonization of regulatory regimes.

(*c*) The regional members shall select a Chairperson from the region, and shall determine the operating rules and procedures of the Forum, which may permit periodic meetings, at the ministerial or expert level, and participation as appropriate of non-regional members in meetings of the Forum. With a view to achieving the purposes of the Forum, the regional members agree that they will:

(i) Keep each other informed and furnish the Bank with the information necessary for the accomplishment of its tasks;

(ii) Consult together at a policy level on a continuing basis, and carry out studies and participate in agreed projects;

(iii) Cooperate closely with each other and where appropriate take coordinated action; and

(iv) Cooperate with the non-regional members of the Bank as appropriate.

(*d*) The President of the Bank (hereinafter referred to as the "President") shall provide the Secretariat and logistical services for the operations and deliberations of the Forum. The Secretariat may provide the Forum at its request with economic analyses, coordinating as appropriate with other international institutions. The Secretariat shall be responsible for generally informing the Board of Directors and the Forum about each other's activities, with a view toward promoting Forum activities that will enhance the effectiveness of Bank operations.

(*e*) The Forum shall have no authority over other organs of the Bank.

Chapter IV

Financial operations

Article 9

Basic principles for financial operations

(*a*) The principal focus of the Bank, in its financial operations, shall be to:

(i) Support projects that have a regional character, or that would have a significant beneficial impact on the region, in particular, infrastructure projects; and

(ii) Support and stimulate the growth of the private sector in the region, including private sector local and regional projects, joint ventures, and small and medium-sized enterprises and foster private and entrepreneurial initiative.

(*b*) The Board of Directors shall assure implementation of these basic principles by periodically reviewing the Bank's portfolio, by providing guidance to the President, or by taking such other action as it deems appropriate.

Article 10

Location of financial operations

The Bank may conduct its financial operations in those regional members that:

(*a*) Are committed to and encouraging the peace process in the region and observing the principles set forth in subparagraphs (i) and (ii) of paragraph (*a*) of article 4 of this Agreement; and

(*b*) Are proceeding steadily to market-oriented economics and the promotion of private and entrepreneurial initiative.

Article 11

General authorities

(*a*) To achieve the purposes of the Bank, and to implement the basic principles for its financial operations set forth in paragraph (*a*) of article 9 of this Agreement, the Board of Directors may authorize the Bank to exercise any or all of the following authorities, consistent with prudent financial management practices and the evolving needs of the region. The Bank may:

(i) Make or participate in, or provide guarantees for, loans;

(ii) Invest in the equity capital of enterprises; and/or

(iii) Provide financial advice, training in economic, managerial, financial and legal issues, research, and other forms of technical assistance; in providing assistance to private sector enterprises, the Bank may help them in coordinating with investment promotion agencies and other financing facilities, and in overcoming obstacles to investment in the region.

(*b*) The Bank may exercise its authorities to provide support:

(i) For any private sector enterprise in a member;

(ii) For the development of infrastructure, and other projects, with significant economic benefits for the region, with special emphasis on private sector participation; or

(iii) For any State-owned enterprise in a process of privatization provided that the enterprise operates autonomously without subsides in a competitive market environment and is subject to bankruptcy laws.

Article 12

MOBILIZING OTHER CAPITAL RESOURCES

(*a*) The Bank shall not undertake any financing, or provide any facilities, when the applicant is able to obtain sufficient financing or facilities from other sources on terms and conditions that the Bank considers reasonable.

(*b*) To mobilize other private or official capital flows:

(i) The Bank shall assure that projects which it finances are also financed by multilateral institutions, commercial banks or other interested sources, except as determined by the Board of Directors; and

(ii) In its equity investments, the Bank shall not seek to obtain a controlling interest in the enterprise concerned and shall not exercise such control or assume direct responsibility for managing any enterprise in which it has an investment, except in the event of actual or threatened default on any of its investments, actual or threatened insolvency of the enterprise in which such investment shall have been made, or other situations which, in the opinion of the Bank, threaten to jeopardize any such investment.

Article 13

GENERAL LIMITS ON OPERATIONS

(*a*) The total amount of outstanding loans, equity investments and guarantees made or issued by the Bank in its ordinary operations shall not be increased at any time, if by such increase the total amount of its unimpaired subscribed capital, reserves and surpluses included in its ordinary capital resources would be exceeded. The Board of Directors shall determine criteria and procedures for charging guarantees against this limit.

(*b*) The Bank shall not issue guarantees for export credits. All loans made or guaranteed by the Bank, and all equity investment by the Bank, shall be for the purpose of specific projects. The Bank shall not engage in fast-disbursing policy-based lending.

Article 14

OTHER OPERATIONAL PRINCIPLES

(*a*) The Bank shall carry out its activities in accordance with sound banking and business policies and prudent financial management practices with a view to maintaining under all circumstances its ability to meet its financial obligations.

(*b*) In providing or guaranteeing financing, the Bank shall pay due regard to the prospect that the borrower and its guarantor, it any, will be in a position to meet their obligations under the financing contract.

(*c*) Before the Bank makes or issues a loan, guarantee or equity investment, the President shall have presented to the Board of Directors a written report regarding the proposal, together with recommendations, on the basis of a staff study. The Board of Directors shall decide on such proposals in accordance with the rules of procedure it adopts.

(*d*) Where the recipient of loans or guarantees of loans is not itself a member, but is an instrumentality of a member or members, the Bank may require the member or members concerned, or a public agency of such member or members acceptable to the Bank, to guarantee the repayment of the principal and the payment of interest and other fees and charges on the loan in accordance with the terms thereof.

Article 15

ENVIRONMENTAL MANDATE

The Bank shall promote in the full range of its activities environmentally sound and sustainable development and shall institute appropriate environmental assessment procedures.

Article 16

FINANCING IN MEMBER

The Bank shall not finance any undertaking within a member if that member objects to such financing.

Article 17

TERMS AND CONDITIONS OF FINANCIAL INSTRUMENTS

(*a*) The Bank shall determine the terms and conditions of each loan and guarantee contract, subject to such rules and regulations as the Board of Directors shall issue. In determining such terms and conditions, the Bank shall take fully into account the need to safeguard its income. The Bank shall not cover the total amount or loss of any guarantee loan.

(*b*) In its investments in individual enterprises, the Bank shall undertake its financing on terms and conditions that it considers appropriate, taking into account the requirements of the enterprise, the risks being undertaken by the Bank, and the terms and conditions normally obtained by private investors for similar financing.

Article 18

DISBURSEMENT OF LOANS, PROCUREMENT AND FOLLOW-UP

(*a*) In case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditures as they are actually incurred.

(*b*) In its financial operations, the Bank shall place no restriction upon the procurement of goods and services from any member, and shall, in all appropriate cases, make its loans and other operations conditional on international invitations to tender being arranged.

(*c*) The Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank, or any equity investment made by the Bank, are used only for the purposes for which the loan or the equity investment was made and with due attention to considerations of economy and efficiency.

CHAPTER V

Additional powers and miscellaneous

Article 19

BORROWING AND OTHER POWERS

The Bank shall have, in addition to the powers specified elsewhere in this Agreement, the power to:

(*a*) Borrow funds in members or elsewhere, provided that a member, either at accession or such later date as the member may determine, may notify the Bank that:

(i) Before making a sale of its obligations in a market of that member, the Bank shall have obtained its approval; and/or

(*ii*) Where the obligations of the Bank are to be denominated in the currency of that member, the Bank shall have obtained its approval;

(*b*) Invest or deposit funds not needed in its operations;

(*c*) Buy and sell securities, in the secondary market, which the Bank has issued or guaranteed or in which it has invested;

(*d*) Guarantee securities in which it has invested in order to facilitate their sale;

(*e*) Exercise such other powers and adopt such rules and regulations as may be necessary or appropriate in furtherance of its purposes as set forth in article 2 of this Agreement; and

(*f*) Conclude agreements of cooperation with any public or private entity or entities.

Article 20

STATEMENT OF SECURITIES

Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government or member, unless it is in fact the obligation of a particular Government or member, in which case it shall so state.

Article 21

FREE USE OF CURRENCIES

Members shall not impose any restrictions on the receipt, holding, use or transfer by the Bank of the following:

(*a*) Currencies received by the Bank in payment of subscriptions to its capital stock, in accordance with article 5 of this Agreement;

(*b*) Currencies obtained by the Bank by borrowing;

(*c*) Currencies and other resources administered by the Bank as contributions to Special Funds; and

(*d*) Currencies received by the Bank in payment on account of principal, interest, dividends, premiums, or other charges in respect of loans, investments, guarantees or the proceeds of disposal of such investments made out of any of the funds referred to in paragraphs (*a*) through (*c*) of this article, or in payment of commissions, fees or other charges.

CHAPTER VI

Financial management

Article 22

GENERAL

The Bank shall observe prudent financial management practices with a view to maintaining under all circumstances its ability to meet its financial obligations.

Article 23

LOSSES AND RESERVES

(*a*) In the Bank's ordinary operations, in cases of arrears or default on loans made, participated in, or guaranteed by the Bank, and in cases of losses on equity investment, the Bank shall take such action as it deems appropriate. The Bank shall maintain appropriate reserves and/or provisions against possible losses.

(*b*) Losses arising in the Bank's ordinary operations shall be charged:

(i) First, to the provisions referred to in paragraph (*a*) of this article;

(ii) Second, to net income;

(iii) Third, against reserves and retained earnings;

(iv) Fourth, against the unimpaired paid-in capital; and

(v) Last, against an appropriate amount of the uncalled subscribed callable capital which shall be called in accordance with the provisions of paragraph (*d*) of article 2 of Schedule A of this Agreement.

Article 24

ALLOCATION OF NET INCOME

(*a*) When satisfied that reserves are at adequate levels and that the Bank has made appropriate provisions against possible losses under paragraph, (*a*) of article 23 of this Agreement, the Board of Governors, by special majority, may decide that a part of net income or retained earnings shall be distributed to members as a divided or to another entity or fund for purposes consistent with the purposes of the Bank.

(*b*) Any such distribution to members shall be made in proportion to the share of each member in the capital of the Bank, provided that in calculating such number account shall be taken only of payments received in cash and promissory notes encashed in respect of such shares on or before the end of the relevant financial year. Payments to each member, and their use by the receiving member, shall be without restriction by any member.

Article 25

BUDGET

The President shall prepare an annual budget of revenues and expenditures of the Bank for approval by the Board of Directors.

Article 26

REPORTS

(*a*) The Bank shall publish an annual report containing an audited statement of its financial position and a profit and loss statement showing the results of its operations, and shall circulate to Directors at intervals of three months or less a summary statement of its accounts.

(*b*) The Bank shall report annually on the environmental impact of its activities and shall publish such other reports as it deems desirable to advance its purpose.

(*c*) Copies of all reports and statements prepared pursuant to this article shall be distributed to members.

Chapter VII

Organization and management

Article 27

Structure of the bank

In addition to the Forum, the Bank shall have a Board of Governors, a Board of Directors, a President, officers and staff to perform such duties as the Bank may determine.

Article 28

The Board of Governors

(*a*) All the powers of the Bank shall be vested in the Board of Governors, except such powers as are, by the terms of this Agreement, specifically conferred upon another organ of the Bank. The Board of Governors may delegate to the Board of Directors the exercise of any of its powers, except the power to:

(i) Elect the President and determine the salary and terms of the contract of service of the President;

(ii) Decide that the President shall cease to hold office;

(iii) Admit new members and determine the conditions of their admission;

(iv) Suspend a member;

(v) Decide on any increase or decrease in capital;

(vi) Decide appeals from interpretations or applications of this Agreement given by eh Board of Directors;

(vii) Elect Directors;

(viii) Determine the compensation of Directors and their Alternates;

(ix) Approve the audited annual financial statements;

(x) Allocate and distribute the net profits of the Bank;

(xi) Sell all or substantially all the assets of the Bank;

(xii) Cease operations and liquidate the Bank;

(xiii) Distribute assets to members pursuant to article 51 of this Agreement; and

(xiv) Amend this Agreement, including its Schedule and Annex.

(*b*) Each member shall be represented on the Board of governors and shall appoint one Governor and one Alternate, who shall serve at the pleasure of the appointing member and without reimbursement or remuneration from the Bank. No Alternate may vote except in the absence of his or her principal. At its inaugural meeting, and annually thereafter or at intervals determined by the Board of Governors, the Board shall elect one of the Governors as Chairperson who shall hold office until the election of the next Chairperson.

(*c*) The Board of Governors shall hold such meetings as may be provided for by the Board of Governors or called by the Board of Directors. The Board of Directors shall call meetings of the Board of Governors whenever requested by not less than five members of the Bank or members holding not less than one quarter of the total voting power of the members. The quorum for any meeting of the Board of Governors shall be a majority of the Governors representing not less than two thirds of the total voting power of the members.

(*d*) The Board of Governors, and the Board of Directors to the extent authorized, may adopt such rules and regulations and establish such subsidiary bodies as may be necessary or appropriate to conduct the business of the Bank.

Article 29

The Board of Directors

(*a*) The Board of Directors shall be responsible for the general operations of the Bank and shall, in addition to the powers assigned to it expressly by this Agreement, exercise all the powers delegated to it by the Board of Governors. In particular, it shall:

(i) Prepare the work of the Board of Governors;

(ii) Establish policies concerning, inter alia

a. The financial operations and financial management of the Bank; and

b. The full disclosure of non-confidential information, and, as appropriate, consultation and participation with local communities throughout the project cycle;

(iii) Present the audited annual financial statements to the Board of Governors for approval;

(iv) Approve the budget of the Bank, including resources for the Forum; and

(v) Report periodically to the Board of Governors on progress toward regional economic cooperation.

(*b*) Unless the Board of Governors decides otherwise by special majority,

(i) Any Governor, representing a member with at least four per cent of the authorized capital stock, may elect a Director; and

(ii) Acting in agreement, two or more Governors, representing members with at least four per cent of the authorized capital stock, may elect a Director.

If any such Governor or Governors represent members which have acceded to this Agreement after a general election of Directors, such as at the inaugural meeting, any Director elected by that Governor or those Governors shall serve for a term coterminous with that of the Directors elected at that general election. Each Director may appoint an Alternate with full power to act for him or her in case of his or her absence or inability to act.

(*c*) Directors shall hold office for a term of three years and may be re-elected for no more than one successive term. They shall continue in office until

their successors shall have been chosen and assumed office. If the office of a Director becomes vacant more than one hundred and eighty days before the end of his or her term, a successor shall be chosen for the remainder of the term by the Governors who elected the former Director. A majority of the votes cast by such Governors shall be required for such election. If the office of a Director becomes vacant one hundred and eighty days or less before the end of his or her term, a successor may be chosen for the remainder of the term by the votes cast by such Governors who elected the former Director, in which election a majority of the votes cast by such Governors shall be required. While the office remains vacant, the Alternate of the former Director shall exercise the powers of the latter, except that of appointing an Alternate.

(*d*) The President shall be ex officio Chairperson of the Board of Directors, but shall have no vote except a deciding vote in case of an equal division.

(*e*) The Board of Directors shall meet at the call of its Chairperson acting on his or her own initiative or upon request of three Directors. A quorum for a meeting of the Board of Directors shall be a majority of the Directors exercising not less than two thirds of the total voting power. The Board of Directors may be regulation establish a procedure whereby its Chairperson, when he or she deems such action to be in the best interests of the Bank, may request a decision of the Board on a specific question without calling a meeting of the Board. It may also establish procedures for approving particular financial operations.

(*f*) The Board of Directors shall not meet in continuous session, shall not be resident at the Bank, and shall serve without remuneration or reimbursement from the Bank. By special majority, the Board of Governors, under such terms and conditions as it determines, may replace the non-resident Board of Directors with a resident Board of Directors of not more than twelve Directors.

Article 30

President, officers and staff

(*a*) The President shall, under the direction of the Board of Directors, conduct the current business of the Bank, and shall be the legal representative of the Bank. He or she shall be responsible for the organization, appointment and dismissal of the officers and staff. In appointing officers and staff, the President shall, subject to the paramount importance of efficiency and technical competence, pay due regard to recruitment on a wide geographical basis among members of the Bank, with due attention to regional recruitment.

(*b*) The Board of Governors, by a vote of a majority of the total number of Governors, representing not less than a majority of the total voting power of the members, shall elect a President. The President, while holding office, shall not be a Governor or a Director or an Alternate for either. The term of office of the President shall be five years, and he or she may be re-elected once. He or she shall, however, cease to hold office when the Board of Governors so decides by special majority. If the office of the President for any reason becomes vacant, the Board of Governors, in accordance with the provisions of this paragraph, shall elect a successor for up to five years. The Board of Governors shall determine the salary and terms of the contract of services of the President.

(*c*) The Bank, its President, officers and staff shall in their decisions take into account only considerations relevant to the Bank's purposes and operations. Such considerations shall be weighed impartially in order to achieve and carry out the purposes of the Bank. The President, officers and staff of the Bank, in the discharge of their offices, shall owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from any attempts to influence any of them in the discharge of their duties.

Article 31

VOTING

(*a*) The voting power of each member shall be equal to the number of its subscribed shares in the capital stock of the Bank. If a member fails to pay any part of the amount due in respect of the paid-in portion of shares to which it has subscribed under article 5 of this Agreement, such member shall be unable, for so long as such failure continues, to exercise that percentage of its voting power which equals the percentage which the amount due but unpaid bears to the total amount of the paid-in portion of shares subscribed to by that member in the capital stock of the Bank.

(*b*) In voting in the Board of Governors, each Governor shall be entitled to cast the votes of the member he or she represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of the voting power of the members voting.

(*c*) In voting in the Board of Directors, each Director shall be entitled to cast the number of votes to which the Governors who have elected him or her are entitled. A Director representing more than one member of the Bank may cast separately the votes of the members he or she represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Directors shall be decided by a majority of the voting power of the Directors voting.

Article 32

LOCATION

(*a*) The principal office of the Bank shall be located in Cairo, Arab Republic of Egypt.

(*b*) The Bank may establish agencies or branch offices in any member of the Bank only on decision by special majority of the Board of Directors.

Article 33

DEPOSITORIES AND CHANNEL OF COMMUNICATION

(*a*) Each member shall designate its central bank, or such other institution as may be agreed upon with the Bank, as a depository for the Bank's holdings of its currency as well as other assets of the Bank.

(*b*) Each member shall designate an appropriate official entity with which the Bank may communicate in connection with any matter arising under this Agreement. Whenever the approval of any member is required before any act may be done by the Bank, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

CHAPTER VIII

Privileges and immunities

Article 34

PURPOSES OF THE CHAPTER

To enable the Bank to fulfil its functions, the privileges and immunities set forth in this chapter shall be accorded to the Bank in each member.

Article 35

LEGAL PROCESS

Actions other than those within the scope of article 43 of this Agreement may be brought against the Bank only in a court of competent jurisdiction in a member in which the Bank has an office or has appointed an agent for the purpose of accepting service or notice of process. No such action against the Bank shall be brought (i) by members or persons acting for or deriving claims from members or (ii) in respect of personnel matters. The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of the final judgment or award against the Bank.

Article 36

ASSETS

(*a*) The property and assets of the Bank, including assets of the Special Funds, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

(*b*) To the extent necessary to carry out its operations under this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 37

ARCHIVES AND COMMUNICATIONS

(*a*) The archives of the Bank shall be inviolable, wherever they may be.

(*b*) The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

Article 38

OFFICIALS OF THE BANK

(*a*) All Governors, Directors, Alternates, officers and staff of the Bank, experts performing missions for the Bank, and the President:

(i) Shall be immune from legal process with respect to acts performed by them in their official capacity, and shall enjoy inviolability of all their official papers and documents. This immunity shall not apply, however, to civil liability in the case of damage arising from a road traffic accident caused by any such Governor, Director, Alternate, officer, staff, expert or the President;

(ii) Not being local nationals, shall be accorded the same immunities form immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials, and employees of comparable rank of other members; and

(iii) Shall be granted the same treatment in respect of traveling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

(*b*) The spouses and immediate dependents of the President, officers, staff and experts performing missions for the Bank who are resident in the member in which the principal or another office or agency of the Bank is located should, wherever possible, in accordance with the law of that member, be accorded opportunity to take employment in that member.

Article 39

TAXES

(*a*) The Bank, its assets, property and income, and its operations and transactions authorized by this Agreement, shall be immune from all taxes and customs duties. The Bank shall also be immune form liability for the collection or payment of any tax or duty.

(*b*) No tax shall be levied on or in respect of salaries, expense allowances or other emoluments paid by the Bank to the President, officers or staff of the Bank, except that a member may deposit, with its instrument of ratification, acceptance or approval of this Agreement, a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emolu-

ments paid by the Bank to citizens or nationals of such member. The Bank shall not make any reimbursement for such taxes. The Bank shall be exempt from any obligation for the payment, withholding or collection of such taxes.

(*c*) No tax of any kind shall be levied on any obligation or security issued or guaranteed by the Bank, including any divided or interest thereon, by whomsoever held, if that tax discriminates against such obligation or security or investment solely because it is issued or guaranteed by the Bank, or of the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

Article 40

APPLICATION OF THIS CHAPTER

Each member shall promptly take such action as is necessary within its jurisdiction for the purpose of making effective in terms of its own law the principles set forth in this chapter, and shall inform the Bank in detail of the action which it has taken.

Article 41

WAIVER

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Bank and may be waived, to such extent and upon such conditions as the Bank may determine, in cases where such a waiver would not prejudice its interests. The President shall waive the immunity of any of the Bank's officers, staff or experts in cases where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank. In similar circumstances and under the same conditions, the Board of Governors shall have the right and the duty to waive any immunity, privilege or exemption in respect of the President.

CHAPTER IX

Settlement of disputes

Article 42

INTERPRETATION AND APPLICATION OF THE AGREEMENT

(*a*) Any question of interpretation or application of the provisions of this Agreement arising between any member of the Bank and the Bank or among members of the Bank shall be submitted to the Board of Directors for its decision. Any member which is particularly affected by the question and which is not otherwise represented directly on the Board of Directors may send a representative to attend any meeting of the Board of Directors at which such question is considered.

(*b*) In any case where the Board of Directors has given a decision under paragraph (*a*) of this article, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the result of the referral to the Board of Governors, the Bank may, so far as it deems necessary, act on the basis of the decision of the Board of Directors.

Article 43

Disputes involving the Bank and relating to withdrawal or suspension

Without prejudice to the provisions of article 42 of this Agreement, any dispute between the Bank and a member or former member which has withdrawn or been suspended shall be settled in accordance with the procedure set forth in Annex A of this Agreement.

Chapter X

Amendments

Article 44

General

The Board of Governors, by special majority, may amend this Agreement, including its Schedule and Annex, except that the affirmative vote of all members shall be required for amendments to the provisions on pre-emptive rights in articles 5 and 52, article 46 (withdrawal), and paragraph (*f*) of article 2 of Schedule of this Agreement (limit on liability).

Article 45

Procedure

Any proposal to amend this Agreement, including its Schedule and Annex, whether by a member or a Governor or a Director, shall be communicated to the Chairperson of the Board of Directors who shall bring the proposal before the Board of Directors. If the proposed amendment is recommended by the Board of Directors, it shall be submitted to the Board of Governors for approval. When an amendment has been duly approved by the Board of Governors, the Bank shall so certify by formal communication addressed to all members. Amendments shall enter into force for all members ninety days after the date of the formal communication unless the Board of Governors shall specify a different date.

Chapter XI

Withdrawal, suspension of membership and cessation of operations

Article 46

WITHDRAWAL

Any member may, after the expiration of three years following the date upon which this Agreement has entered into force with respect to such member, withdraw from the Bank at any time by giving notice in writing to the Bank at its principal office. Any withdrawal shall become effective ninety days following the date of the receipt of such notice by the Bank. A member may revoke such notice as long as it has not become effective.

Article 47

SUSPENSION OF MEMBERSHIP

(*a*) If a member fails to fulfil any of its obligations under this Agreement, the Board of Governors, by special majority, may suspend its membership.

(*b*) While under suspension, a member shall have no rights under this Agreement, except for the rights under this Agreement, except for the right of withdrawal and other rights provided in this chapter and chapter IX of this Agreement, but shall remain subject to all its obligations.

(*c*) The suspended member shall automatically cease to be a member one year from the date of its suspension unless the Board of Governors decides to extend the period of suspension or to restore the member to good standing.

Article 48

RIGHTS AND DUTIES OF FORMER MEMBERS

(*a*) Upon cessation of membership, a former member shall remain liable for all its obligations, including its contingent obligations, under this Agreement which shall have been in effect before the cessation of its membership.

(*b*) Without prejudice to paragraph (*a*) of this Article, the Bank shall enter into an arrangement with such former member for the settlement of their respective claims and obligations. Any such arrangement shall be approved by the Board of Governors.

Article 49

REVIEW OF OPERATIONS, TERMINATION AND DISPOSITION OF ASSETS

(*a*) The Board of Governors shall undertake a fundamental review of the operations of the Bank in the tenth year following the inaugural meeting.

(*b*) Following that review or at other times, the Board of Governors, by special majority, may terminate the operations of the Bank.

(*c*) The Board of Governors, by special majority, may sell al or substantially all the assets of the Bank, including the Bank's portfolio of loans, provided that, prior to the sale, arrangements are in place to discharge or provide for all liabilities to creditors and holders of guarantees.

Article 50

PROTECTION OF CREDITORS AND OTHERS ON TERMINATION

Upon termination of the operations of the Bank:

(*a*) The Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations;

(*b*) The liability of all members for subscriptions to the capital stock of the Bank shall continue until all claims of creditors and holders of guarantees shall have been discharged; and

(*c*) The Bank shall take immediate and appropriate steps to discharge or provide for all liabilities to creditors and holders of guarantees.

Article 51

DISTRIBUTION TO MEMBERS

(*a*) After the Bank has taken a decision in accordance with paragraph (*b*) of article 49 and complied with paragraphs (*a*) and (*c*) of article 50 of this Agreement, or sold all or substantially all the assets of the Bank under paragraph (*c*) of article 49 of this Agreement, the Board of Governors may decide, by special majority, to make a distribution to members in proportion to each member's share in the subscribed capital. No member shall be entitled to its share in the assets of the Bank unless that member has settled all outstanding claims by the Bank against it. The shares of assets distributed need not be uniform as to type of assets. Every distribution of assets shall be made at such times as the Board of Governors shall determine and in such manner as it shall deem fair and equitable.

(*b*) The Bank shall distribute any remaining assets of the Special Funds in accordance with the terms of relevant agreements.

CHAPTER XII

Definitions and final provisions

Article 52

DEFINITIONS

(*a*) "Pre-emptive right" means a reasonable opportunity for a member to subscribe, under such uniform terms and conditions as the Board of Governors shall determine, to a proportion of the increase in stock equivalent to the proportion which its stock subscribed bears to the total subscribed capital stock immediately prior to such increase.

(*b*) "Special majority" means an affirmative vote by eighty per cent of the total voting power.

(*c*) "Ordinary resources" of the Bank shall include:

(i) Authorized capital stock of the Bank, including both the paid-in and callable portions of shares;

(ii) Funds raised by borrowings of the Bank by virtue of powers conferred by paragraph (*a*) of article 19 of this Agreement;

(iii) Funds received in repayment of loans or guarantees, and proceeds form the disposal of equity investments, made with or based on the resources indicated in subparagraphs (i) and (ii) of this paragraph;

(iv) Income derived from loans and equity investments, and income from guarantees, made from or based on the resources indicated in subparagraphs (i), (ii) and (iii) of this paragraph; and

(v) Any other funds or income received by the Bank which do not from part of its Special Funds resources referred to in paragraph (*d*) of this article.

(*d*) "Special Funds resources" shall refer to the resources of any Special Fund and shall include:

(i) Funds accepted by the Bank for inclusion in any Special Fund;

(ii) Funds repaid in respect of loans or guarantees, and the proceeds of equity investments, financed from the resources of any Special Fund which, under the agreement governing that Special Fund, are received by such Special Fund; and

(iii) Income derived from investment of Special Funds resources, or from the operations of any Special Fund.

Article 53

SIGNATURE, RATIFICATION, ACCEPTANCE OR APPROVAL AND ENTRY INTO FORCE

(*a*) This Agreement shall be open for signature at United Nations Headquarters in New York by, for or on behalf of all prospective members whose names are set forth in Schedule Agreement, and shall be subject to ratification, acceptance or approval by the signatories, in accordance with their own procedures.

(*b*) Instruments of ratification, acceptance or approval of this Agreement and amendments thereto shall be deposited with the Secretary-General of the United Nations who shall act as the depositary of this Agreement (hereinafter referred to as the "Depositary"). The Depositary shall transmit certified copies of this Agreement to each signatory, and shall notify the signatories of deposits of instruments of ratification, acceptance and approval, the dates thereof, and the date on which this Agreement enters into force.

(*c*) This Agreement shall enter into force on the date on which instruments of ratification, acceptance or approval shall have been deposited by signatories whose initial subscriptions represent not less than sixty-five per cent of the total subscriptions set forth in Schedule A of this Agreement.

(*d*) For each prospective member which deposits its instrument of ratification, acceptance or approval after this Agreement shall have entered into force, this Agreement shall enter into force on the date of such deposit.

(*e*) If this Agreement shall not have entered into force within two yeas after its opening for signature, the Depositary shall convene a conference of interested parties to determine the future course of action.

Article 54

INAUGURAL MEETING

(*a*) Upon entry into force of this Agreement, the Depositary shall call inaugural meeting of the Board of Governors. This meeting shall be held at the principal office of the Bank within sixty days from the date on which this Agreement has entered into force or as soon as practicable thereafter.

(*b*) At its inaugural meeting, the Board of Governors shall:

(i) Elect the President and Directors;

(ii) Make arrangements for determining the date of the commencement of the Bank's operations; and

(iii) Make such other arrangements as appear to it necessary to prepare for the commencement of the Bank's operations.

(*c*) The Bank shall notify its members of the date of commencement of its operations.

Article 55

REGISTRATION

The Depositary shall register this Agreement with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

DONE on 28, August 1996, in a single copy in the English language.

Schedule A

Article 1

SUBSCRIPTION

Member	*Total Number of Shares*	*Paid-in Portion (in SDRs)*	*Callable portion (in SDRs)*
NON-REGIONAL MEMBERS			
Austria	333,870	8,346,750	25,040,250
Canada	918,143	22,953,563	68,860,688
Cyprus	83,468	2,086,700	6,260,100
Greece	667,740	16,693,500	50,080,500
Italy	1,669,350	41,733,750	125,201,250
Japan	3,171,765	79,294,125	237,882,375
Malta	83,468	2,086,700	6,260,100
Netherlands	1,168,545	29,213,625	87,640,875

Member	*Total Number of Shares*	*Paid-in Portion (in SDRs)*	*Callable portion (in SDRs)*
NON-REGIONAL MEMBERS			
Republic of Korea	417,338	10,433,450	31,300,350
Russian Federation	2,003,220	50,080,500	150,241,500
Turkey	333,870	8,346,750	25,040,250
United States of America	7,011,270	175,281,750	525,845,250
REGIONAL MEMBERS			
Algeria	667,740	16,693,500	50,080,500
Egypt, Arab Republic of	1,335,480	33,387,000	100,161,000
Israel	1,335,480	33,387,000	100,161,000
Jordan	1,335,480	33,387,000	100,161,000
Morocco	667,740	16,693,500	50,080,500
Palestinian Authority	1,335,480	33,387,000	100,161,000
Tunisia	667,740	16,693,500	50,080,500

Article 2

PAYMENT

(*a*) All payment obligations of members with respect to initial capital stock shall be settled on the basis of the average value of the Special Drawing Right in terms of a freely usable currency or the ECU for the period from 1 August 1995, to 31 October 1995.

(*b*) Each original member shall pay for the paid-in portion of shares to which it subscribed in five installments of twenty per cent each. Each member shall pay the first installment within ninety days from the date on which this Agreement enters into force with respect to such member, and, subject to its legislative requirements, shall pay each of the four remaining installments one year from the date on which the preceding installment became due.

(*c*) Payment of each installment of the paid-in portion of shares may be made in cash or in the form of non-negotiable, non-interest-bearing promissory notes or similar obligations denominated in a freely usable currency or ECU, to be encashed pro rata pursuant to a decision by the Board of Directors in order to meet the Bank's obligations or its operational needs.

(*d*) Payment of the amount subscribed to the callable portion of the capital stock of the Bank shall be subject to call only as and when required by the Bank to meet its liabilities. Calls on any portion of unpaid subscriptions shall be uniform on all shares. If the amount received by the Bank on a call shall be insufficient to meet the obligations which have necessitated the call, the bank may further successive calls on unpaid subscriptions until the aggregate amount received by it shall be sufficient to meet such obligations.

(*e*) Payments of subscriptions in cash shall be made in a freely usable currency. For purposes of this article, a freely usable currency is a currency determined to be freely usable by the International Monetary Fund.

(*f*) Liability on shares shall be limited to the unpaid portion of the issue price.

ANNEX A

ARBITRATION

Article 1. The parties to a dispute within the scope of this Annex shall attempt to settle such dispute by negotiation before seeking arbitration. Negotiation shall be deemed to have been exhausted if the parties fail to reach a settlement within a period of one hundred and twenty days from the date of the request to enter into negotiation.

Article 2. Arbitration proceedings shall be instituted by means of a notice by the party seeking arbitration (the claimant) addressed to the other party or parties to the dispute (the respondent). The notice shall specify nature of the dispute, the relief sought and the name of the arbitrator appointed by the claimant. The respondent shall, within thirty days after the date of receipt of the notice, notify the claimant of the name of the arbitrator appointed by it. The two parties shall, within a period of thirty days from the date of appointment of the second arbitrator, select a third arbitrator, who shall act as President of the Arbitral Tribunal (the Tribunal).

Article 3. If the Tribunal shall not have constituted within sixty days from the date of the notice, the arbitrator not yet appointed or the President of the Tribunal not yet selected shall be appointed by the President of the International Court of Justice or such other authority as may have been prescribed by regulation adopted by the Bank to make the appointment.

Article 4. No party shall have the right to change the arbitrator appointed by it once the hearing of the dispute has commenced. In case any arbitrator (including the President of the Tribunak) shall resign, die, or become incapacitated, a successor shall be appointed in the manner followed in the appointment of his or her predecessor and such successor shall have the same powers and duties of the arbitrator he or she succeeds.

Article 5. The Tribunal shall convene first at such time and place as shall be determined by the President of the Tribunal. Thereafter, the Tribunal shall determine the place and dates of its meetings.

Article 6. Unless otherwise provided in this Annex or agreed upon by the parties, the Tribunal shall determine its procedure.

Article 7. The Tribunal shall be the judge of its own competence except that, if an objection is raised before the Tribunal to the effect that the dispute falls within the jurisdiction of the Board of Directors or the Board of Governors under Article 42 of this Agreement and the Tribunal is satisfied that the objection is genuine, the objection shall be referred by the Tribunal to the Board of Directors or the Board of Governors, as the case may be, and arbitration proceedings shall be stayed until a decision has been reached on the matter, which shall be binding upon the Tribunal.

Article 8. The Tribunal shall, in any dispute within the scope of this Annex, apply the provisions of this Agreement, the Bank's by-laws and regulations, and the applicable rules of international law.

Article 9. The Tribunal shall afford a fair hearing to all the parties. All decisions of the Tribunal shall be taken by a majority vote and shall state the reasons on which they are based. The award of the Tribunal shall be in writing and shall be signed by at least two arbitrators, and a copy thereof shall be transmitted to each party. The award shall be final and binding upon the parties and shall not be subject to appeal, annulment or revision.

4. COMPREHENSIVE NUCLEAR-TEST-BAN TREATY.[7] DONE AT NEW YORK ON 10 SEPTEMBER 19968

PREAMBLE

The State Parties to this Treaty (hereinafter referred to as "the States Parties"),

Welcoming the international agreements and other positive measures of recent years in the field of nuclear disarmament, including reductions in arsenals of nuclear weapons, as well as in the field of the prevention of nuclear proliferation in all its aspects.

Underlining the importance of the full and prompt implementation of such agreements and measures,

Convinced that the present international situation provides an opportunity to take further effective measures towards nuclear disarmament and against the proliferation of nuclear weapons in all its aspects, and declaring their intention to take such measures,

Stressing therefore the need for Continued systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons, and of general and complete disarmament under strict and effective international control,

Recognizing that the cessation of all nuclear weapon test explosions and all other nuclear explosions, by constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons and ending the development of advanced new types of nuclear weapons, constitutes and effective measure of nuclear disarmament and non-proliferation in all its aspects,

Further recognizing that an end to all such nuclear explosions will thus constitute a meaningful step in the realization of a systematic process to achieve nuclear disarmament,

Convinced that the most effective way to achieve an end to nuclear testing is through the conclusion of a universal and internationally and effectively verifiable comprehensive nuclear test-ban treaty, which has long been one of the highest priority objectives of the international community in the field of disarmament and non-proliferation,

Noting the aspirations expressed by the Parties to the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water to seek to achieve the discontinuance of all test explosions of nuclear weapons for all time,

Noting also the views expressed that this Treaty could contribute to the protection of the environment,

Affirming the purpose of attracting the adherence of all States to this Treaty and its objective to contribute effectively to the prevention of the proliferation of nuclear weapons in all its aspects, to the process of nuclear disarmament and therefore to the enhancement of international peace and security,

Have agreed as follows:

Article I

BASIC OBLIGATIONS

1. Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control.

2. Each State Party undertakes, furthermore, to refrain from causing encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.

Article II

THE ORGANIZATION

A. *General provisions*

1. The States Parties hereby establish the Comprehensive Nuclear Test-Ban Treaty Organization (hereinafter referred to as "the Organization") to achieve the object and purpose of this Treaty, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.

2. All States Parties shall be members of the Organization. A State Party shall not be deprived of its membership in the Organization.

3. The seat of the Organization shall be Vienna, Republic of Austria.

4. There are hereby established as organs of the Organization: the Conference of the States Parties, the Executive Council and the Technical Secretariat, which shall include the International Data Centre.

5. Each State Party shall cooperate with the Organization in the exercise of its functions in accordance with this Treaty. States Parties shall consult, directly among themselves, or through the Organization or other appropriate international procedures, including procedures within the framework of the United Nations and in accordance with its Charter, on any matter which may be raised relating to the object and purpose, or the implementation of the provisions, of this Treaty.

6. The Organization shall conduct its verification activities provided for under this Treaty in the least intrusive manner possible consistent with the timely and efficient accomplishment of their objectives. It shall request only the information and data necessary to fulfil its responsibilities under this Treaty. It shall take every precaution to protect the confidentiality of information on civil and military activities and facilities coming to its knowledge in the implementation of this Treaty and, in particular, shall abide by the confidentiality provisions set forth in this Treaty.

7. Each State Party shall treat as confidential and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of this Treaty. It shall treat such information and data exclusively in connection with its rights and obligations under this Treaty.

8. The Organization, as an independent body, shall seek to utilize existing expertise and facilities, as appropriate, and to maximize cost efficiencies, through cooperative arrangements with other international organizations such as the International Atomic Energy Agency. Such arrangements, excluding those of a minor and normal commercial and contractual nature, shall be set out in agreements to be submitted to the Conference of the States Parties for approval.

9. The costs of the activities of the Organization shall be met annually by the States Parties in accordance with the United Nations scale of assessments adjusted to take into account differences in membership between the United Nations and the Organization.

10. Financial contributions of States Parties to the Preparatory Commission shall be deducted in an appropriate way from their contributions to the regular budget.

11. A member of the Organization which is in arrears in the payment of its assessed contribution to the Organization shall have no vote in the Organization if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. The Conference of the States Parties may, nevertheless, 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.

B. *The Conference of the States Parties*

Composition, Procedures and Decision-making

12. The Conference of the States Parties (hereinafter referred to as "the Conference") shall be composed of all States Parties. Each State Party shall have one representative in the Conference, who may be accompanied by alternates and advisers.

13. The initial session of the Conference shall be convened by the Depositary no later than 30 days after the entry into force of this Treaty.

14. The Conference shall meet in regular sessions, which shall be held annually, unless it decides otherwise.

15. A special session of the Conference shall be convened:

(*a*) When decided by the Conference;

(*b*) When requested by the Executive Council; or

(*c*) When requested by any State Party and supported by a majority of the States Parties.

The special session shall be convened no later than 30 days after the decision of the Conference, the request of the Executive Council, or the attainment of the necessary support, unless specified otherwise in the decision or request.

16. The Conference may also be convened in the form of an Amendment Conference, in accordance with article VII.

17. The Conference may also be convened in the form of a Review Conference, in accordance with article VIII.

18. Sessions shall take place at the seat of the Organization unless the Conference, decides otherwise.

19. The Conference shall adopt its rules of procedure. At the beginning of each session, it shall elect its President and such other officers as may be required. They shall hold office until a new President and other officers are elected at the next session.

20. A majority of the States Parties shall constitute a quorum.

21. Each State Party shall have one vote.

22. The Conference shall take decisions on matters of procedure by a majority of members present and voting. Decisions on matters of substance shall be taken as far as possible by consensus. If consensus is not attainable when an issue comes up for decision, the President of the Conference shall defer any vote for 24 hours and during this period of deferment shall make every effort to facilitate achievement of consensus, and shall report to the Conference before the end of this period. If consensus is not possible at the end of 24 hours, the Conference shall take a decision by a two-thirds majority of members present and voting unless specified otherwise in this Treaty. When the issue arises as to whether the question is one of substance or not, that question shall be treated as a matter of substance unless otherwise decided by the majority required by decisions on matters of substance.

23. When exercising its function under paragraph 26 (*k*), the Conference shall take a decision to add any State to the list of States contained in annex 1 to this Treaty in accordance with the procedure for decisions on matters of substance set out in paragraph 22. Nothwithstanding paragraph 22, the Conference shall take decisions on any other change to annex 1 to this Treaty by consensus.

Powers and Functions

24. The Conference shall be the principal organ of the Organization. It shall consider any questions, matters or issues within the scope of this Treaty, including those relating to the powers and functions of the Executive Council and the Technical Secretariat, in accordance with this Treaty. It may make recommendations and take decisions on any questions, matters or issues within the scope of this Treaty raised by a State Party or brought to its attention by the Executive Council.

25. The Conference shall oversee the implementation of, and review compliance with, this Treaty and act in order to promote its object and purpose. It shall also oversee the activities of the Executive Council and the Technical Secretariat and may issue guidelines to either of them for the exercise of their functions.

26. The Conference shall:

(*a*) Consider and adopt the report of the Organization on the implementation of this Treaty and the annual programme and budget of the Organization, submitted by the Executive Council, as well as consider other reports;

(*b*) Decide on the scale of financial contributions to be paid by States Parties in accordance with paragraph 9;

(*c*) Elect the members of the Executive Council;

(*d*) Appoint the Director-General of the Technical Secretariat (hereinafter referred to as "the Director-General");

(*e*) Consider and approve the rules of procedure of the Executive Council submitted by the latter;

(*f*) Consider the review scientific and technological developments that could affect the operation of this Treaty. In this context, the Conference may direct the Director-General to establish a Scientific Advisory Board to enable him or her, in the performance of his or her functions, to render specialized advice in areas of science and technology relevant to this Treaty to the Conference, to the Executive Council, or to States Parties. In that case, the Scientific Advisory Board shall be composed of independent experts serving in their individual capacity and appointed, in accordance with terms of reference adopted by the Conference, on the basis of their expertise and experience in the particular scientific fields relevant to the implementation of this Treaty;

(*g*) Take the necessary measures to ensure compliance with this Treaty and to redress and remedy any situation that contravenes the provisions of this Treaty, in accordance with article V;

(*h*) Consider and approve at its initial session any draft agreements, arrangements, provisions, procedures, operational manuals, guidelines and any other documents developed and recommended by Preparatory Commission;

(*i*) Consider and approve agreements or arrangements negotiated by the Technical Secretariat with States Parties, other States and international organizations to be concluded by the Executive Council on behalf of the Organization in accordance with paragraph 38 (*h*);

(*j*) Establish such subsidiary organs as it finds necessary for the exercise of its functions in accordance with this Treaty; and

(*k*) Update annex 1 to this Treaty, as appropriate, in accordance with paragraph 23.

C. *The Executive Council*

Composition, procedures and decision-making

27. The Executive Council shall consist of 51 members. Each State Party shall have the right, in accordance with the provisions of this Article, to serve on the Executive Council.

28. Taking into account the need for equitable geographical distribution, the Executive Council shall comprise:

(*a*) Ten States Parties from Africa;

(*b*) Seven States Parties from Eastern Europe;

(*c*) Nine States Parties from Latin America and the Caribbean;

(*d*) Seven States Parties from the Middle East and South Asia;

(*e*) Ten States Parties from North America and Western Europe; and

(*f*) Eight States Parties from South-East Asia, the Pacific and the Far East.

All States in each of the above geographical regions are listed in annex 1 to this Treaty. Annex 1 to this Treaty shall be updated, as appropriate, by the Conference in accordance with paragraphs 23 and 26 (*k*). It shall not be subject to amendments or changes under the procedures contained in article VII.

29. The members of the Executive Council shall be elected by the Conference. In this connection, each geographical region shall designate States Parties from that region for election as members of the Executive Council as follows:

(*a*) At least one third of the seats allocated to each geographical region shall be filled, taking into account political and security interests, by States Parties in that region designated on the basis of the nuclear capabilities relevant to the Treaty as determined by international data as well as all or any of the following indicative criteria in the order of priority determined by each region:

(i) Number of monitoring facilities of the International Monitoring System;

(ii) Expertise and experience in monitoring technology; and

(iii) Contribution to the annual budget of the Organization;

(*b*) One of the seats allocated to each geographical region shall be filled on a rotational basis by the State Party that is first in the English alphabetical order among the States Parties in that region that have not served as members of the Executive Council for the longest period of time since becoming States Parties or since their last term, whichever is shorter. A State Party designated on this basis may decide to forgo its seat. In that case, such a State Party shall submit a letter of renunciation to the Director-General, and the seat shall be filled by the State Party following next-in-order according to this sub-paragraph; and

(*c*) The remaining seats allocated to each geographical region shall be filled by States Parties designated from among all the States Parties in that region by rotation or elections.

30. Each member of the Executive Council shall have one representative on the Executive Council, who may be accompanied by alternates and advisers.

31. Each member of the Executive Council shall hold office from the end of the session of the Conference at which that member is elected until the end of the second regular annual session of the Conference thereafter, except that for the first election of the Executive Council, 26 members shall be elected to hold office until the end of the third regular annual session of the Conference, due regard being paid to the established numerical proportions as described in paragraph 28.

32. The Executive Council shall elaborate its rules of procedure and submit them to the Conference for approval.

33. The Executive Council shall elect its Chairman from among its members.

34. The Executive Council shall meet for regular sessions. Between regular sessions it shall meet as may be required for the fulfillment of its powers and functions.

35. Each member of the Executive Council shall have one vote.

36. The Executive Council shall take decisions on matters of procedure by a majority of all its members. The Executive Council shall take decisions on matters of substance by a two-thirds majority of all its members unless specified otherwise in this Treaty. When the issue arises as to whether the question is one of substance or not, that question shall be treated as a matter of substance unless otherwise decided by the majority required for decisions on matters of substance.

Powers and functions

37. The Executive Council shall be the executive organ of the Organization. It shall be responsible to the Conference. It shall carry out the powers and

functions entrusted to it in accordance with this Treaty. In so doing, so, it shall act in conformity with the recommendations, decisions and guidelines of Conference and ensure their continuous and proper implementation.

38. The Executive Council shall:

(*a*) Promote effective implementation of, and compliance with, this Treaty;

(*b*) Supervise the activities of the Technical Secretariat;

(*c*) Make recommendations as necessary to the Conference for consideration of further proposals for promoting the object and purpose of this Treaty;

(*d*) Cooperate with the National Authority of each State Party;

(*e*) Consider and submit to the Conference the draft annual programme and budget of the Organization, the draft report of the Organization on the implementation of this Treaty, the report on the performance of its own activities and such other reports as it deems necessary or that the Conference may request;

(*f*) Make arrangements for the sessions of the Conference, including the preparation of the draft agenda;

(*g*) Examine proposals for changes, on matters of an administrative or technical nature, to the Protocol or the Annexes thereto, pursuant to Article VII, and make recommendations to the States Parties regarding their adoption;

(*h*) Conclude, subject to prior approval of the Conference, agreements or arrangements with States Parties, other States and international organizations on behalf of the Organization and supervise their implementation, with the exception of agreements or arrangements referred to in subparagraph (*i*);

(*i*) Approve and supervise the operation of agreements or arrangements relating to the implementation of verification activities with States Parties and other States; and

(*j*) Approve any new operational manuals and any changes to the existing operational manuals that may be proposed by the Technical Secretariat.

39. The Executive Council may request a special session of the Conference.

40. The Executive Council shall:

(*a*) Facilitate cooperation among States Parties, and between States Parties and the Technical Secretariat, relating to the implementation of this Treaty through information exchanges;

(*b*) Facilitate consultation and clarification among States Parties in accordance with article IV; and

(*c*) Receive, consider and take action on requests for, and reports on, on-site inspections in accordance with article IV.

41. The Executive Council shall consider any raised by a State Party about possible non-compliance with this Treaty and abuse of the

Right established by this Treaty. IN so doing, the Executive Council shall consult with the States Parties involved and, as appropriate, request a State Party to take measures to redress the situation within a specified time. To the extent that the Executive Council considers further action to be necessary, it shall take, inter alia, one or more of the following measures:

(*a*) Notify all States Parties of the issue or matter;

(*b*) Bring the issue or matter to the attention of the Conference;

(*c*) Make recommendations to the Conference or take action, as appropriate, regarding measures to redress the situation and to ensure compliance in accordance with article V.

D. *The Technical Secretariat*

42. The Technical Secretariat shall assist States Parties in the implementation of this Treaty. The Technical Secretariat shall assist the Conference and the Executive Council in the performance of their functions. The Technical Secretariat shall carry out the verification and other functions entrusted to it by this Treaty, as well as those functions delegated to it by the Conference or the Executive Council in accordance with this Treaty. The Technical Secretariat shall include, as an integral part, the International Data Centre.

43. The functions of the Technical Secretariat with regard to verification of compliance with this Treaty shall, in accordance with Article IV and the Protocol, include, inter alia:

(*a*) Being responsible for supervising and coordinating the operation of the International Monitoring System;

(*b*) Operating the International Data Centre;

(*c*) Routinely receiving, processing, analyzing and reporting on International Monitoring System data;

(*d*) Providing technical assistance in, and support for, the installation and operation of monitoring stations;

(*e*) Assisting the Executive Council in facilitating consultation and clarification among States Parties;

(*f*) Receiving requests for on-site inspections and processing them, facilitating Executive Council consideration of such requests, carrying out the preparations for, and providing technical support during, the conduct of on-site inspections, and reporting to the Executive Council;

(*g*) Negotiating agreements or arrangements with States Parties, other States and international organizations and concluding, subject to prior approval by the Executive Council, any such agreements or arrangements relating to verification activities with States Parties or other States; and

(*h*) Assisting the States Parties through their National Authorities on other issues of verification under this Treaty.

44. The Technical Secretariat shall develop and maintain, subject to approval by the Executive Council, operation manuals to guide the operation of the various components of the verification regime, in accordance with article IV and the Protocol. These manuals shall not constitute integral parts of this Treaty or the Protocol and may be changed by the Technical Secretariat subject to approval by the Executive Council. The Technical Secretariat shall promptly inform the States Parties of any changes in the operational manuals.

45. The functions of the Technical Secretariat with respect to administrative matters shall include:

(*a*) Preparing and submitting to the Executive Council the draft programme and budget of the Organization;

(*b*) Preparing and submitting to the Executive Council the draft report of the Organization on the implementation of this Treaty and such other reports as the Conference or the Executive Council may request;

(*c*) Providing administrative and technical support to the Conference, the Executive Council and other subsidiary organs;

(*d*) Addressing and receiving communications on behalf of the Organization relating to the implementation of this Treaty; and

(*e*) Carrying out the administrative responsibilities related to any agreements between the Organization and other international organizations.

46. All requests and notifications by States Parties to the Organization shall be transmitted through their National Authorities to the Director-General. Requests and notifications shall be in one of the official languages of this Treaty. In response the Director-General shall use the language of the transmitted request or notification.

47. With respect to the responsibilities of the Technical Secretariat for preparing and submitting to the Executive Council the draft programme and budget of the Organization, the Technical Secretariat shall determine and maintain a clear accounting of all costs for each facility established as part of the International Monitoring System. Similar treatment in the draft programme and budget shall be accorded to all other activities of the Organization.

48. The Technical Secretariat shall promptly inform the Executive Council of any problems that have arisen with regard to the discharge of its functions that have come to its notice in the performance of its activities and that it has been unable to resolve through consultations with the State Party concerned.

49. The Technical Secretariat shall comprise a Director-General, who shall be its head and chief administrative officer, and such scientific, technical and other personnel as may be required. The Director-General shall be appointed by the Conference upon the recommendation of the Executive Council for a term of four years, renewable for one further term, but not thereafter. The first Director-General shall be appointed by the Conference at its initial session upon the recommendation of the Preparatory Commission.

50. The Director-General shall be responsible to the Conference and the Executive Council for the appointment of the staff and the organization and functioning of the Technical Secretariat. 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 professional expertise, experience, efficiency, competence and integrity. Only citizens of States Parties shall serve as the Director-General, as inspectors or as members of the professional and clerical staff. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. Recruitment shall be guided by the principle that the staff shall be kept to the minimum necessary for the proper discharge of the responsibilities of the Technical Secretariat.

51. The Director-General may, as appropriate, after consultation with the Executive Council, establish temporary working groups of scientific experts to provide recommendations on specific issues.

52. In the performance of their duties, the Director-General, the inspectors, the inspection assistants and the members of the staff shall not seek or receive instructions from any Government or from any other source external to the Organization. They shall refrain from any action that might reflect adversely on their positions as international officers responsible only to the Organization. The Director-General shall assume responsibility for the activities of an inspection team.

53. Each State Party shall respect the exclusively international character of the responsibilities of the Director-General, the inspectors, the inspection assistants and members of the staff and shall not seek to influence them in the discharge of their responsibilities.

E. *Privileges and immunities*

54. The Organization shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions.

55. Delegates of States Parties, together with their alternates and advisers, representatives of members elected to the Executive Council, together with their alternates and advisers, the Director-General, the inspectors, the inspection assistants and the members of the staff of the Organization shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the Organization.

56. The legal capacity, privileges and immunities referred to in this Article shall be defined in agreements between the Organization and the States Parties as well as in an agreement between the Organization and the State in which the Organization is seated. Such agreements shall be considered and approved in accorded with paragraph 26 (*h*) and (*i*).

57. Nothwithstanding paragraphs 54 and 55, the privileges and immunities enjoyed by the Director-General, the inspectors, the inspectors, the inspection assistants and the members of the staff of the Technical Secretariat during the conduct of verification activities shall be those set forth in the Protocol.

Article III

National implementation measures

1. Each State Party shall, in accordance with its constitutional processes, take any necessary measures to implement its obligations under this Treaty. In particular, it shall take any necessary measures.

(*a*) To prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Treaty;

(*b*) To prohibit natural and legal persons from undertaking any such activity anywhere under its control; and

(*c*) To prohibit, in conformity with international law, natural persons possessing its nationality from undertaking any such activity anywhere.

2. Each State Party shall cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations under paragraph 1.

3. Each State Party shall inform the Organization of the measures taken pursuant to this article.

4. In order to fulfil its obligations under the treaty, each State Party shall designate or set up a National Authority and shall so inform the Organization upon entry into force of the Treaty for it. The National Authority shall serve as the national focal point for liaison with the Organization and with other States Parties.

Article IV

VERIFICATION

A. *General provisions*

1. In order to verify compliance with this Treaty, a verification regime shall be established consisting of the following elements:

(*a*) An International Monitoring System;

(*b*) Consultation and clarification;

(*c*) On-site inspections; and

(*d*) Confidence-building measures.

At entry force of this Treaty, the verification regime shall be capable of meeting the verification requirements of this Treaty.

2. Verification activities shall be based on objective information, shall be limited to the subject matter of this Treaty, and shall be carried out on the basis of full respect for the sovereignty of States Parties and in the least intrusive manner possible consistent with the effective and timely accomplishment of their objectives. Each State Party shall refrain from any abuse of the right of verification.

3. Each State Party undertakes in accordance with this Treaty to cooperate, through its National Authority established pursuant to article III, paragraph 4, with the Organization and with other States Parties to facilitate the verification of compliance with this Treaty by, inter alia:

(*a*) Establishing the necessary facilities to participate in these verification measures and establishing the necessary communication;

(*b*) Providing data obtained from national stations that are part of the International Monitoring System;

(*c*) Participating, as appropriate, in a consultation and clarification process;

(*d*) Permitting the conduct of on-site inspections; and

(*e*) Participating, as appropriate, in confidence-building measures.

4. All States Parties, irrespective of their technical and financial capabilities, shall enjoy the equal right of verification and assume the equal obligation to accept verification.

5. For the purposes of this Treaty, no State Party shall be precluded from using information obtained by national technical means of verification in a manner consistent with generally recognized principles of international law, including that of respect for the sovereignty of States.

6. Without prejudice to the right of States Parties to protect sensitive installations, activities or locations not related to this Treaty, States Parties shall not interfere with elements of the verification regime of this Treaty or with national technical means of verification operating in accordance with paragraph 5.

7. Each State Party shall have the right to take measures to protect sensitive installations and to prevent disclosure of confidential information and data not related to this Treaty.

8. Moreover, all necessary measures shall be taken to protect the confidentiality of any information related to civil and military activities and facilities obtained during verification activities.

9. Subject to paragraph 8, information obtained by the Organization through the verification regime established by this Treaty shall be made available to all States Parties in accordance with the relevant provisions of this Treaty and the Protocol.

10. The provisions of this Treaty shall not be interpreted as restricting the international exchange of data for scientific purposes.

11. Each State Party undertakes to cooperate with the Organization and with other States Parties in the improvement of the verification regime, and in the examination of the verification potential of additional monitoring technologies such as electromagnetic pulse monitoring or satellite monitoring, with a view to developing, when appropriate, specific measures to enhance the efficient and cost-effective verification of this Treaty. Such measures shall, when agreed, be incorporated in existing provisions in this Treaty, the Protocol or as additional sections of the Protocol, in accordance with article VII, or, if appropriate, be reflected in the operational manuals in accordance with article II, paragraph 44.

12. The States Parties undertake to promote cooperation among themselves to facilitate and participate in the fullest possible exchange relating to technologies used in the verification of this Treaty in order to enable all States Parties to strengthen their national implementation of verification measures and to benefit from the application of such technologies for peaceful purposes.

13. The provisions of this Treaty shall be implemented in a manner which avoids hampering the economic and technological development of the States Parties for further development of the application of atomic energy for peaceful purposes.

Verification responsibilities of the Technical Secretariat

14. In discharging its responsibilities in the area of verification specified in this Treaty and the Protocol, in cooperation with the States Parties the Technical Secretariat shall, for the purpose of this Treaty:

(*a*) Make arrangements to receive and distribute data and reporting products relevant to the verification of this Treaty in accordance with its provisions, and to maintain a global communications infrastructure appropriate to this task;

(*b*) Routinely through its International Data Centre, which shall in principle be the focal point within the Technical Secretariat for data storage and data processing:

(i) Receive and initiate requests for data from the International Monitoring System;

(ii) Receive data, as appropriate, resulting from the process of consultation and clarification, from on-site inspections, and from confidence-building measures; and

(iii) Receive other relevant data from States Parties and international organizations in accordance with this Treaty and the Protocol;

(*c*) Supervise, coordinate and ensure the operation of the International Monitoring System and its component elements, and of the International Data Centre, in accordance with the relevant operational manuals;

(*d*) Routinely process, analyse and report on International Monitoring System data according to agreed procedures so as to permit the effective international verification of this Treaty and to contribute to the early resolution of compliance concerns;

(*e*) Make available all data, both raw and processed, and any reporting products, to all States Parties, each State Party taking responsibility for the use of International Monitoring System data in accordance with article 11, paragraph 7, and with paragraph 8 and 13 of this article;

(*f*) Provide to all States Parties equal, open, convenient and timely access to all stored data;

(*g*) Store all data, both raw and processed, and reporting products;

(*h*) Coordinate and facilitate requests for additional data from the International Monitoring System;

(*i*) Coordinate requests for additional data from one State Party to another State Party;

(*j*) Provide technical assistance in, and support for, the installation and operation of monitoring facilities and respective communication means, where such assistance and support are required by the State concerned;

(*k*) Make available to any State Party, upon its request, techniques utilized by the Technical Secretariat and its International Data Centre in compiling, storing, processing, analyzing and reporting on data from the verification regime; and

(*l*) Monitor, assess and report on the overall performance of the International Monitoring System and of the International Data Centre.

15. The agreed procedures to be used by the Technical Secretariat in discharging the verification responsibilities referred to in paragraph 14 and detailed in the Protocol shall be elaborated in the relevant operational manuals.

B. *The International Monitoring System*

16. The International Monitoring System shall comprise facilities for seismological monitoring, radionuclide monitoring including certified laboratories, hydroacoustic monitoring, infrasound monitoring, and respective means of communication, and shall be supported by the International Data Centre of the Technical Secretariat.

17. The International Monitoring System shall be placed under the authority of the Technical Secretariat. All monitoring facilities of the International Monitoring System shall be owned and operated by the States hosting or otherwise taking responsibility for them in accordance with the Protocol.

18. Each State Party shall have the right to participate in the international exchange of data and to have access to all data made available to the International Data Centre. Each State Party shall cooperate with the International Data Centre through its National Authority.

Funding the International Monitoring System

19. For facilities incorporated into the International Monitoring System and specified in tables 1-A, 2-A, 3 and 4 of annex 1 to the Protocol, and for their functioning, to the extent that such facilities are agreed by the relevant State and the Organization to provide data to the International Data Centre in accordance with the technical requirements of the Protocol and relevant operational manuals, the Organization, as specified in agreements or arrangements pursuant to part I, paragraph 4, of the Protocol, shall meet the costs of:

(*a*) Establishing any new facilities and upgrading existing facilities, unless the State responsible for such facilities meets these costs itself;

(*b*) Operating and maintaining International Monitoring System facilities, including facility physical security if appropriate, and application of agreed data authentication procedures;

(*c*) Transmitting International Monitoring System data (raw or processed) to the International Data Centre by the most direct and cost-effective means available, including, if necessary, via appropriate communications nodes, from monitoring stations, laboratories, analytical facilities or from national data centres; or such data (including samples where appropriate) to laboratory and analytical facilities from monitoring stations; and

(*d*) Analysing samples on behalf of the Organization.

20. For auxiliary network seismic stations specified in Table 1-B of Annex 1 to the Protocol the Organization, as specified in agreements or arrangements pursuant to Part I, paragraph 4, of the Protocol, shall meet the costs only of:

(*a*) Transmitting data to the International Data Centre;

(*b*) Authenticating data from such stations;

(*c*) Upgrading stations to the required technical standard, unless the State responsible for such facilities meets these costs itself;

(*d*) If necessary, establishing new stations for the purposes of this Treaty where no appropriate facilities currently exist, unless the State responsible for such facilities meets these costs itself; and

(*e*) Any other costs related to the provision of data required by the Organization as specified in the relevant operational manuals.

21. The Organization shall also meet the cost of provision to each State Party of its requested selection from the standard range of International Data Centre reporting products and services, as specified in Part I, section F, of the Protocol. The cost of preparation and transmission of any additional data or products shall be met by the requesting State Party.

22. The agreements, or, if appropriate, arrangements concluded with States Parties or States hosting or otherwise taking responsibility for facilities of the International Monitoring System shall contain provisions for meeting these costs. Such provisions may include modalities whereby a State Party meets any of the costs referred to in paragraphs 19 (*a*) and 20 (*c*) and (*d*) for facilities which it hosts or for which it is responsible, and is compensated by an appropriate reduction in its assessed financial contribution to the Organization. Such a reduction shall not exceed 50 per cent of the annual assessed financial contribution of a State Party, but may be spread over successive years. A State Party may share

such reduction with another State Party by agreement or arrangement between themselves and with the concurrence of the Executive Council. The agreements or arrangements referred to in this paragraph shall be approved in accordance with article II, paragraphs 26 (*h*) and 38 (*i*).

Changes to the International Monitoring System

23. Any measures referred to in paragraph 11 affecting the International Monitoring System by means of addition or deletion of a monitoring technology shall, when agreed, be incorporated into this Treaty and the Protocol pursuant to article VII, paragraphs 1 to 6.

24. The following changes to the International Monitoring System, subject to the agreement of those States directly affected, shall be regarded as matters of an administrative or technical nature pursuant to article VII, paragraphs 7 and 8:

(*a*) Changes to the number of facilities specified in the Protocol for a given monitoring technology; and

(*b*) Changes to other details for particular facilities as reflected in the tables of annex 1 to the Protocol (including, inter alia, State responsible for the facility; location; name of facility; type of facility; and attribution of a facility between the primary and auxiliary seismic networks).

If the Executive Council recommends, pursuant to article VII, paragraph 8 (*d*), that such changes be adopted, it shall as a rule also recommend pursuant to article VII, paragraph 8 (*g*), that such changes enter into force upon notification by the Director-General of their approval.

25. The Director-General, in submitting to the Executive Council and States Parties information and evaluation in accordance with article VII, paragraph 8 (*b*), shall include in the case of any proposal made pursuant to paragraph 24:

(*a*) A technical evaluation of the proposal;

(*b*) A statement on the administrative and financial impact of the proposal; and

(*c*) A report on consultations with States directly affected by the proposal, including indication of their agreement.

Temporary Arrangements

26. In cases of significant or irretrievable breakdown of a monitoring facility specified in the tables of annex 1 to the Protocol, or in order to cover other temporary reductions of monitoring coverage, the Director-General shall, in consultation and agreement with those States directly affected, and with the approval of the Executive Council, initiate temporary arrangements of no more than one year's duration, renewable if necessary by agreement of the Executive Council and of the States directly affected for another year. Such arrangements shall not cause the number of operational facilities of the International Monitoring System to exceed the number specified for the relevant network; and shall be conducted within the budget of the Organization. The Director-General shall furthermore take steps to rectify the situation and make proposals for its permanent resolution. The Director-General shall notify all States Parties of any decision taken pursuant to this paragraph.

Cooperating National Facilities

27. States Parties may also separately establish cooperative arrangements with the Organization, in order to make available to the International Data Centre supplementary data from national monitoring stations that are not formally part of the International Monitoring System.

28. Such cooperative arrangements may be established as follows:

(*a*) Upon request by a State Party, and at the expense of that State, the Technical Secretariat shall take the steps required to certify that a given monitoring facility meets the technical and operational requirements specified in the relevant operational manuals for an International Monitoring System facility, and make arrangements for the authentication of its data. Subject to the agreement of the Executive Council, the Technical Secretariat shall then formally designate such a facility as a cooperating national facility. The Technical Secretariat shall take the steps required to revalidate its certification as appropriate;

(*b*) The Technical Secretariat shall maintain a current list of cooperating national facilities and shall distribute it to all States Parties; and

(*c*) The International Data Centre shall call upon data from cooperating national facilities, if so requested by a State Party, for the purposes of facilitating consultation and clarification and the consideration of on-site inspection requests, data transmission costs being borne by that State Party.

The conditions under which supplementary data from such facilities are made available, and under which the International Data Centre may request further or expedited reporting, or clarifications, shall be elaborated in the operational manual for the respective monitoring network.

C. *Consultation and clarification*

29. Without prejudice to the right of any State Party to request an on-site inspection, States Parties should, whenever possible, first make every effort to clarify and resolve, among themselves or with or through the Organization, any matter which may cause concern about possible non-compliance with the basic obligations of this Treaty.

30. A State Party that receives a request pursuant to paragraph 29 directly from another State Party shall provide the clarification to the requesting State Party as soon as possible, but in any case no later than 48 hours after the request. The requesting and requested States Parties may keep the Executive Council and the Director-General informed of the request and the response.

31. A State Party shall have the right to request the Director-General to assist in clarifying any matter which may cause concern about possible non-compliance with the basic obligations of this Treaty. The Director-General shall provide appropriate information in the possession of the Technical Secretariat relevant to such a concern. The Director-General shall inform the Executive Council of the request by the requesting State Party.

32. A State Party shall have the right to request the Executive Council to obtain clarification from another State Party on any matter which may cause concern about possible non-compliance with the basic obligations of this Treaty. In such a case, the following shall apply:

(*a*) The Executive Council shall forward the request for clarification to the requested State Party through the Director-General no later than 24 hours after its receipt;

(*b*) The requested State Party shall provide the clarification to the Executive Council as soon as possible, but in any case no later than 48 hours after receipt of the request;

(*c*) The Executive Council shall take note of the clarification and forward it to the requesting State Party no later than 24 hours after its receipt;

(*d*) If the requesting State Party deems the clarification to be inadequate, it shall have the right to request the Executive Council to obtain further clarification from the requested State Party.

The Executive Council shall inform without delay all other States Parties about any request for clarification pursuant to this paragraph as well as any response provided by the requested State Party.

33. If the requesting State Party considers the clarification obtained under paragraph 32 (*d*) to be unsatisfactory, it shall have the right to request a meeting of the Executive Council in which States Parties involved that are not members of the Executive Council shall be entitled to take part. At such a meeting, the Executive Council shall consider the matter and may recommend any measure in accordance with Article V.

D. *On-site inspections*

Request for an on-site inspection

34. Each State Party has the right to request an on-site inspection in accordance with the provisions of this article and Part II of the Protocol in the territory or in any other place under the jurisdiction or control of any State Party, or in any area beyond the jurisdiction or control of any State.

35. The sole purpose of an on-site inspection shall be to clarify whether a nuclear weapon test explosion or any other nuclear explosion has been carried out in violation of article I and, to the extent possible, to gather any facts which might assist in identifying any possible violator.

36. The requesting State Party shall be under the obligation to keep the on-site inspection request within the scope of this Treaty and to provide in the request information in accordance with paragraph 37. The requesting State Party shall refrain from unfounded or abusive inspection requests.

37. The on-site inspection request shall be based on information collected by the International Monitoring System, on any relevant technical information obtained by national technical means of verification in a manner consistent with generally recognized principles of international law, or on a combination thereof. The request shall contain information pursuant to Part II, paragraph 41, of the Protocol.

38. The requesting State Party shall present the on-site inspection request to the Executive Council and at the same time to the Director-General for the latter to begin immediate processing.

Follow-up After Submission of an On-Site Inspection Request

39. The Executive Council shall begin its consideration immediately upon receipt of the on-site inspection request.

40. The Director-General, after receiving the on-site inspection request, shall acknowledge receipt of the request to the requesting State Party within two hours and communicate the request to the State Party sought to be inspected within six hours. The Director-General shall ascertain that the request meets the requirements specified in Part II, paragraph 41, of the Protocol, and, if necessary, shall assist the requesting State Party in filing the request accordingly, and shall communicate the request to the Executive Council and to all other States Parties within 24 hours.

41. When the on-site inspection request fulfils the requirements, the Technical Secretariat shall begin preparations for the on-site inspection without delay.

42. The Director-General, upon receipt of an on-site inspection request referring to an inspection area under the jurisdiction or control of a State Party, shall immediately seek clarification from the State Party sought to be inspected in order to clarify and resolve the concern raised in the request.

43. A State Party that receives a request for clarification pursuant to paragraph 42 shall provide the Director-General with explanations and with other relevant information available as soon as possible, but no later than 72 hours after receipt of the request for clarification.

44. The Director-General, before the Executive Council takes a decision on the on-site inspection request, shall transmit immediately to the Executive Council any additional information available form the International Monitoring System or provided by any State Party on the event specified in the request, including any clarification provided pursuant to paragraphs 42 and 43, as well as any other information form within the Technical Secretariat that the Director-General deems relevant or that is requested by the Executive Council.

45. Unless the requesting State Party considers the concern raised in the on-site inspection request to be resolved and withdraws the request, the Executive Council shall take a decision on the request in accordance with paragraph 46.

Executive Council Decisions

46. The Executive Council shall take a decision on the on-site inspection request no later than 96 hours after receipt of the request from the requesting State Party. The decision to approve the on-site inspection shall be made by at least 30 affirmative votes of members of the Executive Council. If the Executive Council does not approve the inspection, preparations shall be stopped and no further action on the request shall be taken.

47. No later than 25 days after the approval of the on-site inspection in accordance with paragraph 46, the inspection team shall transmit to the Executive Council, through the Director-General, a progress inspection report. The continuation of the inspection shall be considered approved unless the Executive Council, no later than 72 hours after receipt of the progress inspection re-

port, decides by a majority of all its members not to continue the inspection. If the Executive Council decides not to continue the inspection. If the Executive Council decides not to continue the inspection, the inspection shall be terminated, and the inspection team shall leave the inspection area and the territory of the inspected State Party as soon as possible in accordance with Part II, paragraphs 109 and 110, of the Protocol.

48. In the course of the on-site inspection, the inspection team may submit to the Executive Council, through the Director-General, a proposal to conduct drilling. The Executive Council shall take a decision on such a proposal no later than 72 hours after receipt of the proposal. The decision to approve drilling shall be made by a majority of all members of the Executive Council.

49. The inspection team may request the Executive Council, through the Director-General, to extend the inspection duration by a maximum of 70 days beyond the 60-day time frame specified in Part II, paragraph 4, of the Protocol, if the inspection team considers such an extension essential to enable it to fulfil its mandate. The inspection team shall indicate in its request which of the activities and techniques listed in Part II, paragraph 69, of the Protocol it intends to carry out during the extension period. The Executive Council shall take a decision on the extension request no later than 72 hours after receipt of the request. The decision to approve an extension of the inspection duration shall be made by a majority of all members of the Executive Council.

50. Any time following the approval of the continuation of the on-site inspection in accordance with paragraph 47, the inspection team may submit to the Executive Council, through the Director-General, a recommendation to terminate the inspection. Such a recommendation shall be considered approved unless the Executive Council, no later than 72 hours after receipt of the recommendation, decides by a two-thirds majority of all its members not to approve the termination of the inspection. In case of termination of the inspection, the inspection team shall leave the inspection area and the territory of the inspected State Party as soon as possible in accordance with Part II, paragraphs 109 and 110, of the Protocol.

51. The requesting State Party and the State Party sought to be inspected may participate in the deliberations of the Executive Council on the on-site inspection request without voting. The requesting State Party and the inspected State Party may also participate without voting in any subsequent deliberations of the Executive Council related to the inspection.

52. The Director-General shall notify all States Parties within 24 hours about any decision by and reports, proposals, requests and recommendations to the Executive Council pursuant to paragraphs 46 to 50.

Follow-up After Executive Council Approval of an On-Site Inspection

53. An on-site inspection approved by the Executive Council shall be conducted without delay by an inspection team designated by the Director-General and in accordance with the provisions of this Treaty and the Protocol. The inspection team shall arrive at the point of entry on later than six days following the receipt by the Executive Council of the on-site inspection request from the requesting State Party.

54. The Director-General shall issue an inspection mandate for the conduct of the on-site inspection. The inspection mandate shall contain the information specified in Part II, paragraph 42, of the Protocol.

55. The Director-General shall notify the inspected State Party of the inspection no less than 24 hours before the planned arrival of the inspection team at the point of entry, in accordance with Part II, paragraph 43, of the Protocol.

The Conduct of an On-Site Inspection

56. Each State Party shall permit the Organization to conduct an on-site inspection on its territory or at places under its jurisdiction or control in accordance with the provisions of this Treaty and the Protocol. However, no State Party shall have to accept simultaneous on-site inspections on its territory or at places under its jurisdiction or control.

57. In accordance with the provisions of this Treaty and the Protocol, the inspected State Party shall have:

(*a*) The right and the obligation to make every reasonable effort to demonstrate its compliance with this Treaty and, to this end, to enable the inspection team to fulfil its mandate;

(*b*) The right to take measures it deems necessary to protect national security interests and to prevent disclosure of confidential information not related to the purpose of the inspection;

(*c*) The obligation to provide access within the inspection area for the sole purpose of determining facts relevant to the purpose of the inspection, taking into account subparagraph (*b*) and any constitutional obligations it may have with regard to proprietary rights or searches and seizures;

(*d*) The obligation not to invoke this paragraph or Part II, paragraph 88, of the Protocol to conceal any violation of its obligations under article I; and

(*e*) The obligation not to impede the ability of the inspection team to move within the inspection area and to carry out inspection activities in accordance with this Treaty and the Protocol.

Access, in the context of an on-site inspection, means both the physical access of the inspection team and the inspection equipment to, and the conduct of inspection activities within, the inspection area.

58. The on-site inspection shall be conducted in the least intrusive manner possible, consistent with the efficient and timely accomplishment of the inspection mandate, and in accordance with the procedures set forth in the Protocol. Wherever possible, the inspection team shall begin with the least intrusive procedures and then proceed to more intrusive procedures only as it deems necessary to collect sufficient information to clarify the concern about possible non-compliance with this Treaty. The inspectors shall seek only the information and data necessary for the purpose of the inspection and shall seek to minimize interference with normal operations of the inspected State Party.

59. The inspected State Party shall assist the inspection team throughout the on-site inspection and facilitate its task.

60. If the inspected State Party, acting in accordance with Part II, paragraphs 86 to 96, of the Protocol, restricts access within the inspection area, it shall make every reasonable effort in consultations with the inspection team to demonstrate through alternative means its compliance with this Treaty.

Observer

61. With regard to an observer, the following shall apply:

(*a*) The requesting State Party, subject to the agreement of the inspected State Party, may send a representative, who shall be a national either of the requesting State Party or of a third State Party, to observe the conduct of the on-site inspection;

(*b*) The inspected State Party shall notify its acceptance or non-acceptance of the proposed observer to the Director-General within 12 hours after approval of the on-site inspection by the Executive Council;

(*c*) In case of acceptance, the inspected State Party shall grant access to the observer in accordance with the Protocol;

(*d*) The inspected State Party shall, as a rule, accept the proposed observer, but if the inspected State Party exercises a refusal, that fact shall be recorded in the inspection report.

There shall be no more than three observers from an aggregate of requesting States Parties.

Reports of an On-Site Inspection

62. Inspection reports shall contain:

(*a*) A description of the activities conducted by the inspection team;

(*b*) The factual findings of the inspection team relevant to the purpose of the inspection;

(*c*) An account of the cooperation granted during the on-site inspection;

(*d*) A factual description of the extent of the access granted, including the alternative means provided to the team, during the on-site inspection; and

(*e*) Any other details relevant to the purpose of the inspection.

Differing observations made by inspectors may be attached to the report.

63. The Director-General shall make draft inspection reports available to the inspected State Party. The inspected State Party shall have the right to provide the Director-General within 48 hours with its comments and explanations, and to identify any information and data which, in its view, are not related to the purpose of the inspection and should not be circulated outside the Technical Secretariat. The Director-General shall consider the proposals for changes to the draft inspection report made by the inspected State Party and shall wherever possible incorporate them. The Director-General shall also annex the comments and explanations provided by the inspected State Party to the inspection report.

64. The Director-General shall promptly transmit the inspection report to the requesting State Party, the inspected State Party, the Executive Council and to all other States Parties. The Director-General shall further transmit promptly to the Executive Council and to all other States Parties any results of sample analysis in designated laboratories in accordance with Part II, paragraph 104, of the Protocol, relevant data form the International Monitoring System, the assessments of the requesting and inspected States Parties, as well as any other information that the Director-General deems relevant. In the case of the progress inspection report referred to in paragraph 47, the Director-General shall transmit the report to the Executive Council within the time-frame specified in that paragraph.

65. The Executive Council, in accordance with its powers and functions, shall review the inspection report and any material provided pursuant to paragraph 64, and shall address any concerns as to:

(*a*) Whether an non-compliance with this Treaty has occurred; and

(*b*) Whether the right to request an on-site inspection has been abused.

66. If the Executive Council reaches the conclusion, in keeping with its powers and functions, that further action may be necessary with regard to paragraph 65, it shall take the appropriate measures in accordance with article V.

Frivolous or Abusive On-Site Inspection Requests

67. If the Executive Council does not approve the on-site inspection on the basis that the on-site inspection request is frivolous or abusive, or f the inspection is termination for the same reasons, the Executive Council shall consider and decide on whether to implement appropriate measures to redress the situation, including the following:

(*a*) Requiring the requesting State Party to pay for the cost of any preparations made by the Technical Secretariat;

(*b*) Suspending the right of the requesting State Party to request an on-site inspection for a period of time, as determined by the Executive Council; and

(*c*) Suspending the right of the requesting State Party to serve on the Executive Council for a period of time.

E. *Confidence-building measures*

68. In order to:

(*a*) Contribute to the timely resolution of any compliance concerns arising from possible misinterpretation of verification data relating to chemical explosions; and

(*b*) Assist in the calibration of the stations that are part of the component networks of the International Monitoring System each State Party undertakes to cooperate with the Organization and with other States Parties in implementing relevant measures as set out in Part III of the Protocol.

Article V

MEASURES TO REDRESS A SITUATION AND TO ENSURE COMPLIANCE, INCLUDING SANCTIONS

1. The Conference, taking into account, inter alia, the recommendations of the Executive Council, shall take the necessary measures, as set forth in paragraphs 2 and 3, to ensure compliance with this Treaty and to redress and remedy any situation which contravenes the provisions of this Treaty.

2. In cases where a State Party has been requested by the Conference or the Executive Council to redress a situation raising problems with regard to its compliance and fails to fulfil the request within the specified time, the Conference may, inter alia, decide to restrict or suspend the State Party from the exercise of its rights and privileges under this Treaty until the Conference decides otherwise.

3. In cases where damage to the object and purpose of this Treaty may result from non-compliance with the basic obligations of this Treaty, the Conference may recommend to States Parties collective measures which are in conformity with international law.

4. The Conference, or alternatively, if the case is urgent, the Executive Council, may bring the issue, including relevant information and conclusions, to the attention of the United Nations.

Article VI

SETTLEMENT OF DISPUTES

1. Disputes that may arise concerning the application or the interpretation of this Treaty shall be settled in accordance with the relevant provisions of this Treaty and in conformity with the provisions of the Charter of the United Nations.

2. When a dispute arises between two or more States Parties, or between one or more States Parties and the Organization, relating to the application or interpretation of this Treaty, the parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of the parties' choice, including recourse to appropriate organs of this Treaty and, by mutual consent, referral to the International Court of Justice in conformity with the Statute of the court. The parties involved shall keep the Executive Council informed of actions being taken.

3. The Executive Council may contribute to the settlement of a dispute that may arise concerning the application or interpretation of this Treaty by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties to a dispute to seek a settlement through a process of their own choice, bringing the matter to the attention of the Conference and recommending a time limit for any agreed procedure.

4. The Conference shall consider questions related to disputes raised by States Parties or brought to its attention by the Executive Council. The Conference shall, as it finds necessary, establish or entrust organs with tasks related to the settlement of these disputes in conformity with article II, paragraph 26 (*j*).

5. The Conference and the Executive Council are separately empowered, subject to authorization from the General Assembly of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of the activities of the Organization. An agreement between the Organization and the United Nations shall be concluded for this purpose in accordance with article II, paragraph 38 (*h*).

6. This article is without prejudice to articles IV and V.

Article VII

AMENDMENTS

1. At any time after the entry into force of this Treaty, any State Party may propose amendments to this Treaty, the Protocol, or the annexes to the Protocol. Any State Party may also propose changes, in accordance with paragraph 7, to the Protocol or the annexes thereto. Proposals for amendments shall

be subject to the procedures in paragraphs 2 to 6. Proposals for changes, in accordance with paragraph 7, shall be subject to the procedure in paragraph 8.

2. The proposed amendment shall be considered and adopted only by an Amendment Conference.

3. Any proposal for an amendment shall be communicated to the Director-General, who shall circulate it to all States Parties and the Depositary and seek the views of the States Parties on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Director-General no later than 30 days after its circulation that they support further consideration of the proposal, the Director-General shall convene an Amendment Conference to which all States Parties shall be invited.

4. The Amendment Conference shall be held immediately following a regular session of the Conference unless all States Parties that support the convening of an Amendment Conference request that it be held earlier. In no case shall an Amendment Conference be held less than 60 days after the circulation of the proposed amendment.

5. Amendments shall be adopted by the Amendment Conference by a positive vote of a majority of the States Parties with no State Party casting a negative vote.

6. Amendments shall enter into force for all States Parties 30 days after deposit of the instruments of ratification or acceptance by all those States Parties casting a positive vote at the Amendment Conference.

7. In order to ensure the viability and effectiveness of this Treaty, Parts I and III of the Protocol and annexes 1 and 2 to the Protocol shall be subject to changes in accordance with paragraph 8, if the proposed changes are related only to matters of an administrative or technical nature. All other provisions of the Protocol and the Annexes thereto shall not be subject to changes in accordance with paragraph 8.

8. Proposed changes referred to in paragraph 7 shall be made in accordance with the following procedures:

(*a*) The text of the proposed changes shall be transmitted together with the necessary information to the Director-General. Additional information for the evaluation of the proposal may be provided by any State Party and the Director-General. The Director-General shall promptly communicate any such proposals and information to all States Parties, the Executive Council and the Depositary;

(*b*) No later than 60 days after its receipt, the Director-General shall evaluate the proposal to determine all its possible consequences for the provisions of this Treaty and its implementation and shall communicate any such information to all States Parties and the Executive Council;

(*c*) The Executive Council shall examine the proposal in the light of all information available to its, including whether the proposal fulfils the requirements of paragraph 7. No later than 90 days after its receipt, the Executive Council shall notify its recommendation, with appropriate explanations, to all States Parties for consideration. States Parties shall acknowledge receipt within 10 days;

(*d*) If the Executive Council recommends to all States Parties that the proposal be adopted, it shall be considered approved if no State Party objects to it within 90 days after receipt of the recommendation. If the Executive Council

recommends that the proposal be rejected, it shall be considered rejected if no State Party objects to the rejection within 90 days after receipt of the recommendation;

(*e*) If a recommendation of the Executive Council does not meet with the acceptance required under subparagraph (*d*), a decision on the proposal, including whether it fulfils the requirements of paragraph 7, shall be taken as a matter of substance by the Conference at its next session;

(*f*) The Director-General shall notify all States Parties and the Depositary of any decision under this paragraph;

(*g*) Changes approved under this procedure shall enter into force for all States Parties 180 days after the date of notification by the Director-General of their approval unless another time period is recommended by the Executive Council or decided by the Conference.

Article VIII

REVIEW OF THE TREATY

1. Unless otherwise decided by a majority of the States Parties, ten years after the entry into force of this Treaty a Conference of the States Parties shall be held to review the operation and effectiveness of this Treaty, with a view to assuring itself that the objectives and purposes in the preamble and the provisions of the Treaty are being realized. Such review shall take into account any new scientific and technological developments relevant to this Treaty. On the basis of a request by any State Party, the Review Conference shall consider the possibility of permitting the conduct of underground nuclear explosions for peaceful purposes. If the Review Conference decides by consensus that such nuclear explosions may be permitted, it shall commence work without delay, with a view to recommending to States Parties an appropriate amendment to this Treaty that shall preclude any military benefits of such nuclear explosions. Any such proposed amendment shall be communicated to the Director-General by any State Party and shall be dealt with in accordance with the provisions of article VII.

2. At intervals of ten years thereafter, further Review Conferences may be convened with the same objective, if the Conference so decides as a matter of procedure in the preceding year. Such Conferences may be convened after an interval of less than ten years if so decided by the Conference as a matter of substance.

3. Normally, any Review Conference shall be held immediately following the regular annual session of the Conference provided for in article II.

Article IX

DURATION AND WITHDRAWAL

1. This Treaty shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests.

3. Withdrawal shall be effected by giving notice six months in advance to all other States Parties, the Executive Council, the Depositary and the United Nations Security Council. Notice of withdrawal shall include a statement of the extraordinary event or events which a State Party regards as jeopardizing its supreme interests.

Article X

Status of the Protocol and the annexes

The annexes to this Treaty, the Protocol and the annexes to the Protocol form an integral part of the Treaty. Any reference to this Treaty includes the annexes to this Treaty, the Protocol and the annexes to the Protocol.

Article XI

Signature

This Treaty shall be open to all States for signature before its entry into force.

Article XII

Ratification

This Treaty shall be subject to ratification by States signatories according to their respective constitutional processes.

Article XIII

Accession

Any State which does not sign this Treaty before its entry into force may accede to it at any time thereafter.

Article XIV

Entry into force

1. This Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all States listed in annex 2 to this Treaty, but in no case earlier than two years after its opening for signature.

2. If this Treaty has not entered into force three years after the date of the anniversary of its opening for signature, the Depositary shall convene a Conference of the States that have already deposited their instruments of ratification upon the request of a majority of those States. That Conference shall examine the extent to which the requirement set out in paragraph 1 has been met and

shall consider and decide by consensus what measures consistent with international law may be undertaken to accelerate the ratification process in order to facilitate the early entry into force of this Treaty.

3. Unless otherwise decided by the Conference referred to in paragraph 2 or other such conferences, this process shall be repeated at subsequent anniversaries of the opening for signature of this Treaty, until its entry into force.

4. All States Signatories shall be invited to attend the Conference referred to in paragraph 2 and any subsequent conferences as referred to in paragraph 3, as observers.

5. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the 30th day following the date of deposit of their instruments of ratification or accession.

Article XV

RESERVATIONS

The articles of the annexes to this Treaty shall not be subject to reservations. The provisions of the Protocol to this Treaty and the annexes to the Protocol shall not be subject to reservations incompatible with the object and purpose of this Treaty.

Article XVI

DEPOSITARY

1. The Secretary-General of the United Nations shall be the Depositary of this Treaty and shall receive signatures, instruments of ratification and instruments of accession.

2. The Depositary shall promptly inform all States signatories and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of the entry into force of this Treaty and of any amendments and changes thereto, and the receipt of other notices.

3. The Depositary shall send duly certified copies of this Treaty to the Governments of the States signatories and acceding States.

4. This Treaty shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

Article XVIII

AUTHENTIC TEXTS

This Treaty, 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.

ANNEX 1 TO THE TREATY

LIST OF STATES PURSUANT TO ARTICLE II, PARAGRAPH 28

Africa

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, United Republic of Tanzania, Zaire, Zambia, Zimbabwe.

Eastern Europe

Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Poland, Republic of Moldova, Romania, Russian Federation, Slovakia, Slovenia, the former Yugoslav Republic of Macedonia, Ukraine, Yugoslavia.

Latin America and the Caribbean

Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Middle East and South Asia

Afghanistan, Bahrain, Bangladesh, Bhutan, India, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Maldives, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, Sri Lanka, Syrian Arab Republic, Tajikistan, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen.

North America and Western Europe

Andorra, Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Holy See, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Span, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

Southeast Asia, the Pacific and the Far East

Australia, Brunei Darussalam, Cambodia, China, Cook Islands, Democratic People's Republic of Korea, Fiji, Indonesia, Japan, Kiribati, Lao People's Democratic Republic, Malaysia, Marshall Islands, Micronesia (Federated States of), Mongolia, Myanmar, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Thailand, Tonga, Tuvalu, Vanuatu, Viet Nam.

ANNEX 2 TO THE TREATY

LIST OF STATES PURSUANT TO ARTICLE XIV

List of States members of the Conference on Disarmament as at 18 June 1996 which formally participated in the work of the 1996 session of the Conference and which appear in table 1 of the International Atomic Energy Agency's April 1996 edition of "Nuclear Power Reactors in the World", and of States members of the Conference on Disarmament

as at 18 June 1996 which formally participated in the work of the 1996 session of the Conference and which appear in table 1 of the International Atomic Energy Agency's December 1995 edition of "Nuclear Research Reactors in the World":

Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Democratic People's Republic of Korea, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Mexico, Netherlands, Norway, Pakistan, Peru, Poland, Romania, Republic of Korea, Russian Federation, Slovakia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet Nam, Zaire.

Protocol to the Comprehensive Nuclear Test-Ban Treaty

PART I

THE INTERNATIONAL MONITORING SYSTEM AND INTERNATIONAL DATA CENTRE FUNCTIONS

A. *General provisions*

1. The International Monitoring System shall comprise monitoring facilities as set out in Article IV, paragraph 16, and respective means of communication.

2. The monitoring facilities incorporated into the International Monitoring System shall consist of those facilities specified in annex 1 to this Protocol. The International Monitoring System shall fulfil the technical and operational requirements specified in the relevant operational manuals.

3. The Organization, in accordance with article II, shall, in cooperation and consultation with the States Parties, with other States, and with international organizations as appropriate, establish and coordinate the operation and maintenance, and any future agreed modification or development of the International Monitoring System.

4. In accordance with appropriate agreements or arrangements and procedures, a State Party or other State hosting or otherwise taking responsibility for International Monitoring System facilities and the Technical Secretariat shall agree and cooperate in establishing, operating, upgrading, financing, and maintaining monitoring facilities, related certified laboratories and respective means of communication within areas under its jurisdiction or control or elsewhere in conformity with international law. Such cooperation shall be in accordance with the security and authentication requirements and technical specifications contained in the relevant operational manuals. Such a State shall give the Technical Secretariat authority to access a monitoring facility for checking equipment and communication links, and shall agree to make the necessary changes in the equipment and the operational procedures to meet agreed requirements. The Technical Secretariat shall provide to such States appropriate technical assistance as is deemed by the Executive Council to be required for the proper functioning of the facility as part of the International Monitoring System.

5. Modalities for such cooperation between the Organization and States Parties or States hosting or otherwise taking responsibility for facilities of the International Monitoring System shall be set out in agreements or arrangements as appropriate in each case.

B. *Seismological monitoring*

6. Each State Party undertakes to cooperate in an international exchange of seismological data to assist in the verification of compliance with this Treaty. This cooperation shall include the establishment and operation of a global network of primary and auxiliary seismological monitoring stations. These stations shall provide data in accordance with agreed procedures to the International Data Centre.

7. The network of primary stations shall consist of the 50 stations specified in table 1-A of annex 1 to this Protocol. These stations shall fulfil the technical and operational requirements specified in the Operational Manual for Seismological Monitoring and the International Exchange of Seismological Data. Uninterrupted data from the primary stations shall be transmitted, directly or through a national data center, on-line to the International Data Centre.

8. To supplement the primary network, an auxiliary network of 120 stations shall provide information, directly or thorough a national data center, to the International Data Centre upon request. The auxiliary stations to be used are listed in table 1-B of annex 1 to this Protocol. The auxiliary stations shall fulfil the technical and operational requirements specified in the Operational Manual for Seismological Monitoring and the International Exchange of Seismological Data. Data from the auxiliary stations may at any time be requested by the International Data Centre and shall be immediately available though on-line computer connections.

C. *Radionuclide monitoring*

9. Each State Party undertakes to cooperate in an international exchange of data on radionuclides in the atmosphere to assist in the verification of compliance with this Treaty. This cooperation shall include the establishment and operation of a global network of radionuclide monitoring stations and certified laboratories. The network shall provide data in accordance with agreed procedures to the International Data Centre.

10. The network of stations to measure radionuclides in the atmosphere shall comprise an overall network of 80 stations, as specified in table 2-A of annex 1 to this Protocol. All stations shall be capable of monitoring for the presence of relevant particulate matter in the atmosphere. Forty of these stations shall also be capable of monitoring for the presence of relevant noble gases upon the entry into force of this Treaty. For this purpose the Conference, at its initial session, shall approve a recommendation by the Preparatory Commission as to which 40 stations from table 2-A of annex 1 to this Protocol shall be capable of noble gas monitoring. At its first regular annual session, the Conference shall consider and decide on a plan for implementing noble gas monitoring capability throughout the network. The Director-General shall prepare a report to the Conference on the modalities for such implementation. All monitoring stations shall fulfil the technical and operational requirements specified in the Operational Manual for Radionuclide Monitoring and the International Exchange of Radionuclide Data.

11. The network of radionuclide monitoring stations shall be supported by laboratories, which shall be certified by Technical Secretariat in accordance with the relevant operational manual for the performance, on contract to the Organization and on a fee-for-service basis, of the analysis of samples form radionuclide monitoring stations. Laboratories specified in table 2-B of annex 1 to this Protocol, and appropriately equipped, shall, as required, also be drawn upon by the Technical Secretariat to perform additional analysis of samples from radionuclide monitoring stations. With the agreement of the Executive Council, further laboratories may be certified by the Technical Secretariat to perform the routine analysis of samples from manual monitoring stations where necessary. All certified laboratories shall provide the results of such analysis to the International Data Centre, and in so doing shall fulfil the technical and operational requirements specified in the Operational Manual on Radionuclide Monitoring and the International Exchange of Radionuclide Data.

D. *Hydroacoustic monitoring*

12. Each State Party undertakes to cooperate in an international exchange of hydroacoustic data to assist in the verification of compliance with this Treaty. This cooperation shall include the establishment and operation of a global network of hydroacoustic monitoring stations. These stations shall provide data in accordance with agreed procedures to the International Data Centre.

13. The network of hydroacoustic stations shall consist of the stations specified in table 3 of annex 1 to this Protocol, and shall comprise an overall network of six hydrophone and five T-phase stations. These stations shall fulfil the technical and operational requirements specified in the Operational Manual for Hydroacoustic Monitoring and the International Exchange of Hydroacoustic Data.

E. *Infrasound monitoring*

14. Each State Party undertakes to cooperate in an international exchange of infrasound data to assist in the verification of compliance with this Treaty. This cooperation shall include the establishment and operation of a global network of infrasound monitoring stations. These stations shall provide data in accordance with agreed procedures to the International Data Centre.

15. The network of infrasound stations shall consist of the stations specified in table 4 of annex 1 to this Protocol, and shall comprise an overall network of 60 stations. These stations fulfil the technical and operational requirements specified in the Operational Manual for Infrasound Monitoring and the International Exchange of Infrasound Data.

F. *International Data Centre functions*

16. The International Data Centre shall receive, collect, process, analyse, report on and achieve data from International Monitoring System facilities, including the results of analysis conducted at certified laboratories.

17. The procedures and standard event screening criteria to be used by the International Data Centre in carrying out its agreed functions, in particular for the production of standard reporting products and for the performance of a standard range of services for States Parties, shall be elaborated in the Operational Manual for the International Data Centre and shall be progressively developed. The procedures and criteria developed initially by the Preparatory Commission shall be approved by the Conference at its initial session.

International Data Centre Standard Products

18. The International Data Centre shall apply on a routine basis automatic processing methods and interactive human analysis to raw International Monitoring System data in order to produce and archive standard International Data Centre products on behalf of all States Parties. These products shall be provided at no cost to States Parties and shall be without prejudice to final judgments with regard to the nature of any event, which shall remain the responsibility of States Parties, and shall include:

(*a*) Integrated lists of all signals detected by the International Monitoring System, as well as standard event lists and bulletins, including the values and associated uncertainties calculated for each event located by the International Data Centre, based on a set of standard parameters;

(*b*) Standard screened event bulletins that result from the application to each event by the International Data Centre of standard event screening criteria, making use of the characterization parameters specified in annex 2 to this Protocol, with the objective of characterizing, highlighting in the standard event bulletin, and thereby screening out, events considered to be consistent with natural phenomena or non-nuclear, man-made phenomena. The standard event bulletin shall indicate numerically for each event the degree to which that event meets or does not meet the event screening criteria. In applying standard event screening, the International Data Centre shall progressively enhance its technical capabilities as experience is gained in the operation of the International Monitoring System;

(*c*) Executive summaries, which summarize the data acquired and archived by the International Data Centre, the products of the International Data Centre, and the performance and operational status of the International Monitoring System and International Data Centre; and

(*d*) Extracts or subsets of the standard International Data Centre products specified in subparagraphs (*a*) to (*c*), selected according to the request of an individual State Party.

19. The International Data Centre shall carry out, at no cost to States Parties, special studies to provide in-depth, technical review by expert analysis of data from the International Monitoring System, if requested by the Organization or by a State Party, to improve the estimated values for the standard signal and event parameters.

International Data Centre Services to States Parties

20. The International Data Centre shall provide States Parties with open, equal, timely and convenient access to all International Monitoring System data, raw or processed, all International Data Centre products, and all other International Monitoring System data in the archive of the International Data Centre or, through the International Data Centre, of International Monitoring System facilities. The methods for supporting data access and the provision of data shall include the following services:

(*a*) Automatic and regular forwarding to a State Party of the products of the International Data Centre or the selection by the State Party thereof, and, as requested, the selection by the State Party of International Monitoring System data;

(*b*) The provision of the data or products generated in response to ad hoc requests by States Parties for the retrieval from the International Data Centre and International Monitoring System facility archives of data and products, including interactive electronic access to the International Data Centre database; and

(*c*) Assisting individual States Parties, at their request and at no cost for reasonable efforts, with expert technical analysis of International Monitoring System data and other relevant data provided by the requesting State Party, in order to help the State Party concerned to identify the source of specific events. The output of any such technical analysis shall be considered a product of the requesting State Party, but shall be available to all States Parties.

The International Data Centre services specified in subparagraphs (*a*) and (*b*) shall be made available at no cost to each State Party. The volumes and formats of data shall be set out in the Operational Manual for the International Data Centre.

National Event Screening

21. The International Data Centre shall, if requested by a State Party, apply to any of its standard products, on a regular and automatic basis, national event screening criteria established by that State Party, and provide the results of such analysis to that State Party. This service shall be undertaken at no cost to the requesting State Party. The output of such national event screening processes shall be considered a product of the requesting State Party.

Technical Assistance

22. The International Data Centre shall, where required, provide technical assistance to individual States Parties:

(*a*) In formulating their requirements for selection and screening of data and products;

(*b*) By installing at the International Data Centre, at no cost to a requesting State Party for reasonable efforts, computer algorithms or software provided by that State Party to compute new signal and even parameters that are not included in the Operational Manual for the International Data Centre, the output being considered products of the requesting State Party; and

(*c*) By assisting States Parties to develop the capability to receive, process and analyse International Monitoring System data at a national data center.

23. The International Data Centre shall continuously monitor and report on the operational status of the International Monitoring System facilities, of communications links, and of its own processing systems. It shall provide immediate notification to those responsible should the operational performance of any component fail to meet agreed levels set out in the relevant operational manual.

PART II

ON-SITE INSPECTIONS

A. *General provisions*

1. The procedure in this part shall be implemented pursuant to the provisions for on-site inspections set out in article IV.

2. The on-site inspection shall be carried out in the area where the event that triggered the on-site inspection request occurred.

3. The area of on-site inspection shall be continuous and its size shall not exceed 1,000 square kilometers. There shall be no liner distance greater than 50 kilometres in any direction.

4. The duration of an on-site inspection shall not exceed 60 days from the date of the approval of the on-site inspection request in accordance with article IV, paragraph 46, but may be extended by a maximum of 70 days in accordance with article IV, paragraph 49.

5. If the inspection area specified in the inspection mandate extends to the territory or other place under the jurisdiction or control of more than one State Party, the provisions on on-site inspections shall, as appropriate, apply to each of the States Parties to which the inspection area extends.

6. In cases where the inspection area is under the jurisdiction or control of the inspected State Party but is located on the territory of another State Party or where the access from the point of entry to the inspection area requires transit through the territory of a State Party other than the inspected State Party, the inspected State Party shall exercise the rights and fulfil the obligations concerning such inspections in accordance with this Protocol. In such a case, the State Party on whose territory the inspection area is located shall facilitate the inspection and shall provide for the necessary support to enable the inspection team to carry out its tasks in a timely and effective manner. States Parties through whose territory transit is required to reach the inspection area shall facilitate such transit.

7. In cases where the inspection area is under the jurisdiction or control of the inspected State Party but is located on the territory of a State not Party to this Treaty, the inspected State Party shall take all necessary measures to ensure that the inspection can be carried out in accordance with this Protocol. A State Party that has under its jurisdiction or control one or more areas on the territory of a State not Part to this Treaty shall take all necessary measures to ensure acceptance by the State on whose territory the inspection area is located of inspectors and inspection assistants designated to that State Party. If an inspected State Party is unable to ensure access, it shall demonstrate that it took all necessary measures to ensure access.

8. In cases where the inspection area is located on the territory of a State Party but is under the jurisdiction or control of a State not Party to this Treaty, the State Party shall take all necessary measures required of an inspected State Party and a State Party on whose territory the inspection area is located, without prejudice to the rules and practices of international law, to ensure that the on-site inspection can be carried out in accordance with this Protocol. If the State Party is unable to ensure access to the inspection area, it shall demonstrate that it took all necessary measures to ensure access, without prejudice to the rules and practices of international law.

9. The size of the inspection team shall be kept to the minimum necessary for the proper fulfillment of the inspection mandate. The total number of members of the inspection team present on the territory of the inspected State Party at any given time, except during the conduct of drilling, shall not exceed 40 persons. No national of the requesting State Party or the inspected State Party shall be a member of the inspection team.

10. The Director-General shall determine the size of the inspection team and select its members from the list of inspectors and inspection assistants, taking into account the circumstances of particular request.

11. The inspected State Party shall provide for or arrange the amenities necessary for the inspection team, such as communication means, interpretation services, transportation, working space, lodging, meals, and medical care.

12. The inspected State Party shall be reimbursed by the Organization, in a reasonably short period of time after conclusion of the inspection, for all expenses, including those mentioned in paragraphs 11 and 49, related to the stay and functional activities of the inspection team on the territory of the inspected State Party.

13. Procedures for the implementation of on-site inspections shall be detailed in the Operational Manual for On-Site Inspections.

B. *Standing arrangements*

Designation of inspectors and inspection assistants

14. An inspection team may consist of inspectors and inspection assistants. An on-site inspection shall only be carried out by qualified inspectors specially designated for this function. They may be assisted by specially designated inspection assistants, such as technical and administrative personnel, aircrew and interpreters.

15. Inspectors and inspection assistants shall be notified for designation by the States Parties or, in the case of staff of the Technical Secretariat, by the Director-General, on the basis of their expertise and experience relevant to the purpose and functions of on-site inspections. The nominees shall be approved in advance by the States Parties in accordance with paragraph 18.

16. Each State Party, no later than 30 days after the entry into force of this Treaty for it, shall notify the Director-General of the names, dates of birth, sex, ranks, qualifications and professional experience of the persons proposed by the State Party for designation as inspectors and inspection assistants.

17. No later than 60 days after the entry into force of this Treaty, the Technical Secretariat shall communicate in writing to all States Parties an initial list of the names, nationalities, dates of birth, sex and ranks of the inspectors and inspection assistants proposed for designation by the Director-General and the States Parties, as well as a description of their qualifications and professional experience.

18. Each State Party shall immediately acknowledge receipt of the initial list of inspectors and inspection assistants proposed for designation. Any inspector or inspection assistant included in this list shall be regarded as accepted unless a State Party, no later than 30 days after acknowlegement of receipt of the list, declares its non-acceptance in writing. The State Party may include the reason for the objection. In the case of the non-acceptance, the proposed inspector or inspection assistant shall not undertake or participate in on-site inspection activities on the territory or in any other place under the jurisdiction or control of the State Party that has declared its non-acceptance. The Technical Secretariat shall immediately confirm receipt of the notification of objection.

19. Whenever additions or changes to the list of inspectors and inspection assistants are proposed by the Director-General of a State Party, replacement inspectors and inspection assistants shall be designated in the same manner as set forth with respect to the initial list. Each State Party shall promptly notify the Technical Secretariat if an inspector or inspection assistant nominated by it can no longer fulfil the duties of an inspector or inspection assistant.

20. The Technical Secretariat shall keep the list of inspectors and inspection assistants up to date and notify all States Parties of any additions or changes to the list.

21. A State Party requesting an on-site inspection may propose that an inspector from the list of inspectors and inspection assistants serve as its observer in accordance with Article IV, paragraph 61.

22. Subject to paragraph 23, a State Party shall have the right at any time to object to an inspector or inspection assistant who has already been accepted. It shall notify the Technical Secretariat of its objection in writing and may include the reason for the objection. Such objection shall come into effect 30 days after receipt of the notification by the Technical Secretariat. The Technical Secretariat shall immediately confirm receipt of the notification of the objection and inform the objecting and nominating States Parties of the date on which the inspector or inspection assistant shall cease to be designated for that State Party.

23. A State Party that has been notified of an inspection shall not seek the removal from the inspection team of any of the inspectors or inspection assistants named in the inspection mandate.

24. The number of inspectors and inspection assistants accepted by a State Party must be sufficient to allow for availability of appropriate numbers of inspectors and inspection assistants. If, in the opinion of the Director-General, the non-acceptance by a State Party of proposed inspectors or inspection assistants impedes the designation of a sufficient number of inspectors and inspection assistants or otherwise hampers the effective fulfillment of the purposes of an on-site inspection, the Director-General shall refer the issue to the Executive Council.

25. Each inspector included in the list of inspectors and inspection assistants shall receive relevant training. Such training shall be provided by the Technical Secretariat pursuant to the procedures specified in the Operational Manual for On-Site Inspections. The Technical Secretariat shall co-ordinate, in agreement with the States Parties, a schedule of training for the inspectors.

Privileges and Immunities

26. Following acceptance of the initial list of inspectors and inspection assistants as provided for in paragraph 18 or as subsequently altered in accordance with paragraph 19, each State Party shall be obliged to issue, in accordance with its national procedures and upon application by an inspector or inspection assistant, multiple entry/exit and/or transit visas and other relevant documents to enable each inspector and inspection assistant to enter and to remain on the territory of that State Party for the sole purpose of carrying out inspection activities. Each State Party shall issue the necessary visa or travel documents for this purpose no later than 48 hours after receipt of the application or immediately upon arrival of the inspection team at the point of entry on the territory of the State Party. Such documents shall be valid for as long as is necessary to enable the inspector or inspection assistant to remain on the territory of the inspected State Party for the sole purpose of carrying out the inspection activities.

27. To exercise their functions effectively, members of the inspection team shall be accorded privileges and immunities as set forth in subparagraphs (*a*) to (*i*). Privileges and immunities shall be granted to members of the inspection team for the sake of this Treaty and not for the personal benefit of the individuals themselves. Such privileges and immunities shall be accorded to them for the entire period between arrival on and departure from the territory of the inspected State Party, and thereafter with respect to acts previously performed in the exercise of their official functions.

(*a*) The members of the inspection team shall be accorded the inviolability enjoyed by diplomatic agents pursuant to article 29 of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(*b*) The living quarters and office premises occupied by the inspection team carrying out inspection activities pursuant to this Treaty shall be accorded the inviolability and protection accorded to the premises of diplomatic agents pursuant to article 30, paragraph 1, of the Vienna Convention on Diplomatic Relations;

(*c*) The papers and correspondence, including records, of the inspection team shall enjoy the inviolability accorded to all papers and correspondence of diplomatic agents pursuant to article 30, paragraph 2, of the Vienna Convention on Diplomatic Relations. The inspection team shall have the right to use codes for their communications with the Technical Secretariat;

(*d*) Samples and approved equipment carried by members of the inspection team shall be inviolable subject to provisions contained in this Treaty and exempt from all customs duties. Hazardous samples shall be transported in accordance with relevant regulations;

(*e*) The members of the inspection team shall be accorded the immunities accorded to diplomatic agents pursuant to article 31, paragraphs 1, 2 and 3, of the Vienna Convention on Diplomatic Relations;

(*f*) The members of the inspection team carrying out prescribed activities pursuant to this Treaty shall be accorded the exemption from dues and taxes accorded to diplomatic agents pursuant to article 34 of the Vienna Convention on Diplomatic Relations;

(*g*) The members of the inspection team shall be permitted to bring into the territory of the inspected State Party, without payment of any customs duties or related charges, articles for personal use, with the exception of articles the import or export of which is prohibited by law or controlled by quarantine regulations;

(*h*) The members of the inspection team shall be accorded the same currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions; and

(*i*) The members of the inspection team shall not engage in any professional or commercial activity for personal profit on the territory of the inspected State Party.

28. When transiting the territory of States Parties other than the inspected State Party, the members of the inspection team shall be accorded the privileges and immunities enjoyed by diplomatic agents pursuant to article 40, paragraph 1, of the Vienna Convention on Diplomatic Relations. Papers and correspondence, including records, and samples and approved equipment carried by them, shall be accorded the privileges and immunities set forth in paragraph 27 (*c*) and (*d*).

29. Without prejudice to their privileges and immunities the members of the inspection team shall be obliged to respect the laws and regulations of the inspected State Party and, to the extent that is consistent with the inspection mandate, shall be obliged not to interfere in the internal affairs of that State. If the inspected State Party considers that there has been an abuse of privileges and immunities specified in this Protocol, consultations shall be held between the State Party and the Director-General to determine whether such an abuse has occurred and, if so determined, to prevent a repetition of such an abuse.

30. The immunity form jurisdiction of members of the inspection team may be waived by the Director-General in those cases when the Director-General is of the opinion that immunity would impede the course of justice and that it can be waived without prejudice to the implementation of the provisions of this Treaty. Waiver must always be express.

31. Observers shall be accorded the same privileges and immunities accorded to members of the inspection team pursuant to this section, except for those accorded pursuant to paragraph 27 (*d*).

Points of Entry

32. Each State Party shall designate its points of entry and shall supply the required information to the Technical Secretariat no later than 30 days after this Treaty

enters into force for it. These points of entry shall be such that the inspection team can reach any inspection area from at least one point of entry within 24 hours. Locations of points of entry shall be provided to all States Parties by the Technical Secretariat. Points of entry may also serve as points of exit.

33. Each State Party may change its points of entry by giving notice of such change to the Technical Secretariat. Changes shall become effective 30 days after the Technical Secretariat receives such notification, to allow notification to all States Parties.

34. If the Technical Secretariat considers that there are insufficient points of entry for the timely conduct of inspections or that changes to the points of entry proposed by a State Party would hamper such timely conduct of inspections, it shall enter into consultations with the State Party concerned to resolve the problem.

Arrangements for use of non-scheduled aircraft

35. Where timely travel to the point of entry is not feasible using scheduled commercial flights, an inspection team may utilize non-scheduled aircraft. No later than 30 days after this Treaty enters into force for it, each State Party shall inform the Technical Secretariat of the standing diplomatic clearance number for non-scheduled aircraft transporting an inspection team and equipment necessary for inspection. Aircraft routings shall be along established international airways that are agreed upon between the State Party and the Technical Secretariat as the basis for such diplomatic clearance.

Approved inspection equipment

36. The Conference, at its initial session, shall consider and approve a list of equipment for use during on-site inspections. Each State Party may submit proposals for the inclusion of equipment in the list. Specifications for the use of the equipment, as detailed in the Operational Manual for On-Site Inspections, shall take account of safety and confidentiality considerations where such equipment is likely to be used.

37. The equipment for use during on-site inspections shall consist of core equipment for the inspection activities and techniques specified in paragraph 69 and auxiliary equipment necessary for the effective and timely conduct of on-site inspections.

38. The Technical Secretariat shall ensure that all types of approved equipment are available for on-site inspections when required. When required for an on-site inspection, the Technical Secretariat shall duly certify that the equipment at the point of entry by the inspected State Party, the Technical Secretariat shall provide documentation and attach seals to authenticate the certification.

39. Any permanently held equipment shall be in the custody of the Technical Secretariat. The Technical Secretariat shall be responsible for the maintenance and calibration of such equipment.

40. As appropriate, the Technical Secretariat shall make arrangements with States Parties to provide equipment mentioned in the list. Such States Parties shall be responsible for the maintenance and calibration of such equipment.

C. *On-site inspection request, inspection mandate and notification of inspection*

On-site inspection request

41. Pursuant to article IV, paragraph 37, the on-site inspection request shall contain at least the following information:

(*a*) The estimated geographical and vertical coordinates of the location of the event that triggered the request with an indication of the possible margin of error;

(*b*) The proposed boundaries of the area to be inspected specified on a map and in accordance with paragraphs 2 and 3;

(*c*) The State Party or States Parties to be inspected or an indication that the area to be inspected or part thereof is beyond the jurisdiction or control of any State;

(*d*) The probably environment of the event that triggered the request;

(*e*) The estimated time of the event that triggered the request with an indication of the possible margin of error;

(*f*) All data upon which the request is based;

(*g*) The personal details of the proposed observer, if any; and

(*h*) The results of a consultation and clarification process in accordance with article IV, or an explanation, if relevant, of the reasons why such a consultation and clarification process has not been carried out.

Inspection Mandate

42. The mandate for an on-site inspection shall contain:

(*a*) The decision of the Executive Council on the on-site inspection request;

(*b*) The name of the State Party or States Parties to be inspected or an indication that the inspection area or part thereof is beyond the jurisdiction or control of any State;

(*c*) The location and boundaries of the inspection area specified on a map, taking into account all information on which the request was based and all other available technical information, in consultation with the requesting State Party;

(*d*) The planned types of activity of the inspection team in the inspection area;

(*e*) The point of entry to be used by the inspection team;

(*f*) Any transit or basing points, as appropriate;

(*g*) The name of the head of the inspection team;

(*h*) The names of members of the inspection team;

(*i*) The name of the proposed observer, if any; and

(*j*) The list of equipment to be used in the inspection area.

If a decision by the Executive Council pursuant to Article IV, paragraphs 46 to 49, necessitates a modification of the inspection mandate, the Director-General may update the mandate with respect to sub-paragraphs (*d*), (*h*) and (*j*), as appropriate. The Director-General shall immediately notify the inspected State Party of any such modification.

Notification of inspection

43. The notification made by the Director-General pursuant to article IV, paragraph 55, shall include the following information:

(*a*) The inspection mandate;

(*b*) The date and estimated time of arrival of the inspection team at the point of entry;

(*c*) The means of arrival at the point of entry;

(*d*) If appropriate, the standing diplomatic clearance number for non-scheduled aircraft; and

(*e*) A list of any equipment which the Director-General requests the inspected State Party to make available to the inspection team for use in the inspection area.

44. The inspected State Party shall acknowledge receipt of the notification by the Director-General no later than 12 hours after having received the notification.

D. *Pre-inspection activities*

Entry into the territory of the inspected state party, activities at the point of entry and transfer to the inspection area

45. The inspected State Party that has been notified of the arrival of the inspection team shall ensure the immediate entry of the inspection team into its territory.

46. When a non-scheduled aircraft is used for travel to the point of entry, the Technical Secretariat shall provide the inspected State Party with a flight plan, through the National Authority, for the flight of the aircraft from the airfield prior to entering the airspace of that State Party to the point of entry, no less than six hours before the scheduled departure time from that airfield. Such a plan shall be filed in accordance with the procedures of the International Civil Aviation Organization applicable to civil aircraft. The Technical Secretariat shall include in the remarks section of the flight plan the standing diplomatic clearance number and the appropriate notation identifying the aircraft as an inspection aircraft. If a military aircraft is used, the Technical Secretariat shall request prior authorization from the inspected State Party to enter its airspace.

47. No less than three hours before the scheduled departure of the inspection team from the last airfield prior to entering the airspace of the inspected State Party, the inspected State Party shall ensure that the flight plan filed in accordance with paragraph 46 is approved, so that the inspection team may arrive at the point of entry by the estimated arrival time.

48. Where necessary, the head of the inspection team and the representative of the inspected State Party shall agree on a basing point and a flight plan from the point of entry to the basing point and, if necessary, to the inspection area.

49. The inspected State Party shall provide for or arrange parking, security protection, servicing and fuel as required by the Technical Secretariat for the aircraft of the inspection team at the point of entry and, where necessary, at the basing point and at the inspection area. Such aircraft shall not be liable for landing fees, departure tax, and similar charges. This paragraph shall also apply to aircraft used for overflight during the on-site inspection.

50. Subject to paragraph 51, there shall be no restriction by the inspected State Party on the inspection team bringing approved equipment that is in conformity with the inspection mandate into the territory of that State Party, or on its use in accordance with the provisions of the Treaty and this Protocol.

51. The inspected State Party shall have the right, without prejudice to the time-frame specified in paragraph 54, to check in the presence of inspection team members at the point of entry that the equipment has been approved and certified in accordance with paragraph 38. The inspected State Party may exclude equipment that is not in conformity with the inspection mandate or that has not been approved and certified in accordance with paragraph 38.

52. Immediately upon arrival at the point of entry and without prejudice to the time frame specified in paragraph 54, the head of the inspection team shall present to the representative of the inspected State Party the inspection mandate and an initial inspection plan prepared by the inspection team specifying the activities to be carried out by it. The inspection team shall be briefed by representatives of the inspected State Party with the aid of maps and other documentation as appropriate. The briefing shall include relevant natural terrain features, safety and confidentiality issues, and logistical arrangements for the inspection. The inspected State Party may indicate locations within the inspection area that, in its view, are not related to the purpose of the inspection.

53. After the pre-inspection briefing, the inspection team shall, as appropriate, modify the initial inspection plan, taking into account any comments by the inspected State Party. The modified inspection plan shall be made available to the representative of the inspected State Party.

54. The inspected State Party shall do everything in its power to provide assistance and to ensure the safe conduct of the inspection team, the approved equipment specified in paragraphs 50 and 51 and baggage from the point of entry to the inspection area no later than 36 hours after arrival at the point of entry, if no other timing has been agreed upon within the time frame specified in paragraph 57.

55. To confirm that the area to which the inspection team has been transported corresponds to the inspection area specified in the inspection mandate, the inspection team shall have the right to use approved location-finding equipment. The inspected State Party shall assist the inspection team in this task.

E. *Conduct of inspections*

General rules

56. The inspection team shall discharge its functions in accordance with the provisions of the Treaty and this Protocol.

57. The inspection shall begin its inspection activities in the inspection area as soon as possible, but in no case later than 72 hours after arrival at the point of entry.

58. The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the inspection area.

59. In cases where the inspected State Party has been requested, pursuant to paragraph 43 (*e*) or in the course of the inspection, to make available any equipment for use by the inspection team in the inspection area, the inspection State Party shall comply with the request to the extent it can.

60. During the on-site inspection the inspection team shall have, inter alia:

(*a*) The right to determine how the inspection will proceed, consistent with the inspection mandate and taking into account any steps taken by the inspected State Party consistent with the provisions on managed access;

(*b*) The right to modify the inspection plan, as necessary, to ensure the effective execution of the inspection;

(*c*) The obligation to take into account the recommendations and suggested modifications by the inspected State Party to the inspection plan;

(*d*) The right to request clarifications in connection with ambiguities that may arise during the inspection;

(*e*) The obligation to use only those techniques specified in paragraph 69 and to refrain from activities that are not relevant to the purpose of the inspection. The team shall collect and document such facts as are related to the purpose of the inspection, but shall neither seek nor document information that is clearly unrelated thereto. Any material collected and subsequently found not to be relevant shall be returned to the inspected State Party;

(*f*) The obligation to take into account and include in its report data and explanations on the nature of the event that triggered the request, provided by the inspected State Party from the national monitoring networks of the inspected State Party and from other sources;

(*g*) The obligation to provide the inspected State Party, at its request, with copies of the information and data collected in the inspection area; and

(*h*) The obligation to request the confidentiality and the safety and health regulations of the inspected State Party.

61. During the on-site inspection the inspected State Party shall have, inter alia:

(*a*) The right to make recommendations at any time to the inspection team regarding possible modification of the inspection plan;

(*b*) The right and the obligation to provide a representative to liaise with the inspection team;

(*c*) The right to have representatives accompany the inspection team during the performance of its duties and observe all inspection activities carried out by the inspection team. This shall not delay or otherwise hinder the inspection team in the exercise of its functions;

(*d*) The right to provide additional information and to request the collection and documentation of additional facts it believes are relevant to the inspection;

(*e*) The right to examine all photographic and measurement products as well as samples and to retain any photographs or parts thereof showing sensitive sites not related to the purpose of the inspection. The inspected State Party shall have the right to receive duplicate copies of all photographic and measurement products. The inspected State Party shall have the right to retain photographic originals and first-generation photographic products and to put photographs or parts thereof under joint seal within its territory. The inspected State Party shall have the right to provide its own camera operator to take still/video photographs as requested by the inspection team. Otherwise, these functions shall be performed by members of the inspection team;

(*f*) The right to provide the inspection team, from its national monitoring networks and form other sources, with data and explanations on the nature of the event that triggered the request; and

(*g*) The obligation to provide the inspection team with such clarification as may be necessary to resolve any ambiguities that arise during the inspection.

Communications

62. The members of the inspection team shall have the right at all times during the on-site inspection to communicate with each other and with the Technical Secretariat. For this purpose they may use their own duly approved and certified equipment with the consent of the inspected State Party, to the extent that the inspected State Party does not provide them with access to other telecommunications.

Observer

63. In accordance with article IV, paragraph 61, the requesting State Party shall liaise with the Technical Secretariat to coordinate the arrival of the observer at the same point of entry or basing point as the inspection team within a reasonable period of the arrival of the inspection team.

64. The observer shall have the right throughout the inspection to be in communication with the embassy of the requesting State Party located in the inspected State Party or, in the case of absence of an embassy, with the requesting State Party itself.

65. The observer shall have the right to arrive at the inspection area and to have access to and within the inspection area as granted by the inspected State Party.

66. The observer shall have the right to make recommendations to the inspection team throughout the inspection.

67. Throughout the inspection, the inspection team shall keep the observer informed about the conduct of the inspection and the findings.

68. Throughout the inspection, the inspected State Party shall provide or arrange for the amenities necessary for the observer similar to those enjoyed by the inspection team as described in paragraph 11. All costs in connection wit the stay of the observer on the territory of the inspected State Party shall be borne by the requesting State Party.

Inspection Activities and Techniques

69. The following inspection activities may be conducted and techniques, used, in accordance with the provisions on managed access, on collection, handling and analysis of samples, and on overflights:

(*a*) Position of finding form the air and at the surface to confirm the boundaries of the inspection area and establish coordinates of locations therein, in support of the inspection activities;

(*b*) Visual observation, video and still photography and multispectral imaging, including infrared measurements, at and below the surface, and from the air, to search for anomalies or artifacts;

(*c*) Measurement of levels of radioactivity above, at and below the surface, using gamma radiation monitoring and energy resolution analysis from the air, and at or under the surface, to search for and identify radiation anomalies;

(*d*) Environmental sampling and analysis of solids, liquids and gases from above, at and below the surface to detect anomalies;

(*e*) Passive seismological monitoring for aftershocks to localize the search area and facilitate determination of the nature of an event;

(*f*) Resonance seismometry and active seismic surveys to search for and locate underground anomalies, including cavities and rubble zones;

(*g*) Magnetic and gravitational field mapping, ground penetrating radar and electrical conductivity measurements at the surface and from the air, as appropriate, to detect anomalies or artifacts; and

(*h*) Drilling to obtain radioactive samples.

70. Up to 25 days after the approval of the on-site inspection in accordance with article IV, paragraph 46, the inspection team shall have the right to conduct any of the activities and use any of the techniques listed in paragraph 69 (*a*) to (*e*). Following the approval of the continuation of the inspection in accordance with article IV, paragraph 47, the inspection team shall have the right to conduct any of the activities and use any of the techniques listed in paragraph 69 (*a*) to (*g*). The inspection team shall only conduct drilling after the approval of the Executive Council in accordance with article IV, paragraph 48. If the inspection team requests an extension of the inspection duration in accordance with article IV, paragraph 49, it shall indicated in its request which of the activities and techniques listed in paragraph 69 it intends to carry out in order to be able to fulfil its mandate.

Overflights

71. The inspection team shall have the right to conduct an overflight over the inspection area during the on-site inspection for the purposes of providing the inspection team with a general orientation of the inspection area, narrowing down and optimizing the locations for ground-based inspection and facilitating the collection of factual evidence using equipment specified in paragraph 79.

72. The overflight shall be conducted as soon as practically possible. The total duration of the overflight over the inspection area shall be no more than 12 hours.

73. Additional overflights using equipment specified in paragraphs 79 and 80 may be conducted subject to the agreement of the inspected State Party.

74. The area to be covered by overflights shall not extend beyond the inspection area.

75. The inspected State Party shall have the right to impose restrictions or, in exceptional cases and with reasonable justification, prohibitions on the overflight of sensitive sites not related to the purpose of the inspection. Restrictions may relate to the flight altitude, the number of passes and circling, the duration of hovering, the type of aircraft, the number of inspectors on board, and the type of measurements or observations. If the inspection team considers that the restrictions or prohibitions on the overflight of sensitive sites may impede the fulfillment of its mandate, the inspected State Party shall make every reasonable effort to provide alternative means of inspection.

76. Overflights shall be conducted according to a flight plan duly filed and approved in accordance with aviation rules and regulations of the inspected State Party. Flight safety regulations of the inspected State Party shall be strictly observed throughout all flying operations.

77. During overflights landing should normally be authorized only for purposes of staging or refueling.

78. Overflights shall be conducted at altitudes as requested by the inspection team consistent with the activities to be conducted, visibility conditions, as well as the aviation and the safety regulations of the inspected State Party and its right to protect sensitive information not related to the purposes of the inspection. Overflights shall be conducted up to a maximum altitude of 1,500 metres above the surface.

79. For the overflight conducted pursuant to paragraphs 71 and 72, the following equipment may be used on board the aircraft:

(*a*) Field Glasses;

(*b*) Passive location-finding equipment;

(*c*) Video cameras; and

(*d*) Hand-held still cameras.

80. For any additional overflights conducted pursuant to paragraph 73, inspectors on board the aircraft may also use portable, easily installed equipment for:

(*a*) Multispectral (including infrared) imagery;

(*b*) Gamma spectroscopy; and

(*c*) Magnetic field mapping.

81. Overflights shall be conducted with a relatively slow fixed or rotary wing aircraft. The aircraft shall afford a broad, unobstructed view of the surface below.

82. The inspected State Party shall have the right to provide its own aircraft, pre-equipped as appropriate in accordance with the technical requirements of the relevant operational manual, and crew. Otherwise, the aircraft shall be provided or rented by the Technical Secretariat.

83. If the aircraft is provided or rented by the Technical Secretariat, the inspected State Party shall have the right to check the aircraft to ensure that it is equipped with approved inspection equipment. Such checking shall be completed within the time frame specified in paragraph 57.

84. Personnel on board the aircraft shall consist of:

(*a*) The minimum number of flight crew consistent with the safe operation of the aircraft;

(*b*) Up to four members of the inspection team;

(*c*) Up to two representatives of the inspected State Party;

(*d*) An observer, if any, subject to the agreement of the inspected State Party; and

(*e*) An interpreter, if necessary.

85. Procedures for the implementation of overflights shall be detailed in the Operational Manual for On-Site Inspections.

Managed access

86. The inspection team shall have the right to access the inspection area in accordance with the provisions of the Treaty and this Protocol.

87. The inspected State Party shall provide access within the inspection area in accordance with the time frame specified in paragraph 57.

88. Pursuant to article IV, paragraph 57, and paragraph 86 above, the rights and obligations of the inspected State Party shall include:

(*a*) The right to take measures to protect sensitive installations and locations in accordance with this Protocol;

(*b*) The obligation, when access is restricted within the inspection area, to make every reasonable effort to satisfy the requirements of the inspection mandate through alternative means. Resolving any questions regarding one or more aspects of the inspection shall not delay or interfere with the conduct of the inspection team of other aspects of the inspection; and

(*c*) The right to make the final decision regarding any access of the inspection team, taking into account its obligations under this Treaty and the provisions on managed access.

89. Pursuant to article IV, paragraph 57 (*b*), and paragraph 88 (*a*) above, the inspected State Party shall have the right throughout the inspection area to take measures to protect sensitive installations and locations and to prevent disclosure of confidential information not related to the purpose of the inspection. Such measures may include, inter alia:

(*a*) Shrouding of sensitive displays, stores, and equipment;

(*b*) Restricting measurements of radio nuclide activity and nuclear radiation to determining the presence or absence of those types and energies of radiation relevant to the purpose of the inspection;

(*c*) Restricting the taking or analyzing of samples to determining the presence or absence of radioactive or other products relevant to the purpose of the inspection;

(*d*) Managing access to buildings and other structures in accordance with paragraphs 90 and 91; and

(*e*) Declaring restricted-access sites in accordance with paragraphs 92 to 96.

90. Access to buildings and other structures shall be deferred until after the approval of the continuation of the on-site inspection in accordance with article IV, paragraph 47, except for access to buildings and other structures housing the entrance to a mine, other excavations, or caverns of large volume not otherwise accessible. For such buildings and structures, the inspection team shall have the right only of transit, as directed by the inspected State Party, in order to enter such mines, caverns or other excavations.

91. If, following the approval of the continuation of the inspection in accordance with article IV, paragraph 47, the inspection team demonstrates credibly to the inspected State Party that access to buildings and other structures is necessary to fulfil the inspection mandate and that the necessary activities authorized in the mandate could not be carried out form the outside, the inspection team shall have the right to gain access to such buildings or other structures. The head of the inspection team shall request access to a specific building or structure indicating the purpose of such access, the specific number of inspectors, as well as the intended activities. The modalities for access shall be subject to negotiation between the inspection team and the inspected State Party. The inspected State Party shall have the right to impose restrictions or, in exceptional cases and with reasonable justification, prohibitions, or the access to buildings and other structures.

92. When restricted-access sites are declared pursuant to paragraph 89 (*e*), each such site shall be no larger than 4 square kilometers. The inspected State Party has the right to declare up to 50 square kilometers of restricted-access sites. If more than one restricted-access site is declared, each such site shall be separated from any other such site by a minimum distance of 20 metres. Each restricted-access site shall have clearly defined and accessible boundaries.

93. The size, location, and boundaries of restricted-access sites shall be presented to the head of the inspection team no later than the time that the inspection team seeks to a location that contains all or part of such a site.

94. The inspection team shall have the right to place equipment and take other steps necessary to conduct its inspection up to the boundary of a restricted-access site.

95. The inspection team shall be permitted to observe visually all open places within the restricted-access site form the boundary of the site.

96. The inspection team shall make every reasonable effort to fulfil the inspection mandate outside the declared restricted-access sites prior to requesting access to such sites. If at any time the inspection team demonstrates credibly to the inspected State Party that the necessary activities authorized in the mandate could not be carried out from the outside and that access to a restricted-access site is necessary to fulfil the mandate, some members of the inspection team shall be granted access to accomplish specific tasks within the site. The inspected State Party shall have the right to shroud or otherwise protect

sensitive equipment, objects and materials not related to the purpose of the inspection. The number of inspectors shall be kept to the minimum necessary to complete the tasks related to the inspection. The modalities for such access shall be subject to negotiation between the inspection team and the inspected State Party.

Collection, Handling and Analysis of Samples

97. Subject to paragraphs 86 to 96 and 98 to 100, the inspection team shall have the right to collect and remove relevant samples form the inspection area.

98. Whenever possible, the inspection team shall analyse samples on-site. Representatives of the inspected State Party shall have the right to be present when samples are analysed on-site. At the request of the inspection team, the inspected State Party shall, in accordance with agreed procedures, provide assistance for the analysis of samples on-site. The inspection team shall have the right to transfer samples for off-site analysis at laboratories designated by the Organization only if it demonstrates that the necessary sample analysis cannot be performed on-site.

99. The inspected State Party shall have the right to request that any unused samples or portions thereof be returned.

100. The inspected State Party shall have the right to request that any unused samples or portions thereof be returned.

101. The designated laboratories shall conduct chemical and physical analysis of the samples transferred for off-site analysis. Details of such analysis shall be elaborated in the Operational Manual for On-Site Inspections.

102. The Director-General shall have the primary responsibility for the security, integrity and preservation of samples and for ensuring that the confidentiality of samples transferred for off-site analysis is protected. The Director-General shall do so in accordance with procedures contained in the Operational Manual for On-Site Inspections. The Director-General shall, in any case:

(*a*) Establish a stringent regime governing the collection, handling, transport and analysis of samples;

(*b*) Certify the laboratories designated to perform different types of analysis;

(*c*) Oversee the standardization of equipment and procedures at these designated laboratories and of mobile analytical equipment and procedures;

(*d*) Monitor quality control and overall standards in relation to the certification of these laboratories and in relation to mobile equipment and procedures; and

(*e*) Select from among the designated laboratories those which shall perform analytical or other functions in relation to specific investigations.

103. When off-site analysis is to be performed, samples shall be analysed in at least two designated laboratories. The Technical Secretariat shall ensure the expeditious processing of the analysis. The samples shall be accounted for by the Technical Secretariat and any unused samples or portions thereof shall be returned to the Technical Secretariat.

104. The Technical Secretariat shall compile the results of the laboratory analysis of samples relevant to the purpose of the inspection. Pursuant to article IV, paragraph 63, the Director-General shall transmit any such results promptly to the inspected State Party for comments and thereafter to the Executive Council and to all other States Parties and shall include detailed information concerning the equipment and methodology employed by the designated laboratories.

Conduct of inspections in areas beyond the jurisdiction or control of any State

105. In case of an on-site inspection in an area beyond the jurisdiction or control of any State, the Director-General shall consult with the appropriate States Parties and agree on any transit or basing points to facilitate a speedy arrival of the inspection team in the inspection area.

106. The States Parties on whose territory transit or basing points are located shall, as far as possible, assist in facilitating the inspection, including transporting the inspection team, its baggage and equipment to the inspection area, as well as providing the relevant amenities specified in paragraph 11. The Organization shall reimburse assisting States Parties for all costs incurred.

107. Subject to the approval of the Executive Council, the Director-General may negotiate standing arrangements with States Parties to facilitate assistance in the event of an on-site inspection in an area beyond the jurisdiction or control of any State.

108. In cases where one or more States Parties have conducted an investigation of an ambiguous event in an area beyond the jurisdiction or control of any State before a request is made for an on-site inspection in that area, any results of such investigations may be taken into account by the Executive Council in its deliberations pursuant to article IV.

Post-inspection procedures

109. Upon conclusion of the inspection, the inspection team shall meet with the representative of the inspected State Party to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide the representative of the inspected State Party with its preliminary findings in written form according to a standardized format, together with a list of any samples and other material taken from the inspection area pursuant to paragraph 98. The document shall be signed by the head of the inspection team. In order to indicate that he or she has taken notice of the contents of the document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed no later than 24 hours after the conclusion of the inspection.

Departure

110. Upon completion of the post-inspection procedures, the inspection team and the observer shall leave, as soon as possible, the territory of the inspected State Party. The Inspected State Party shall do everything in its power to provide assistance and to ensure the safe conduct of the inspection team, equipment and baggage to the point of exit. Unless agreed otherwise by the inspected State Party and the inspection team, the point of exit used shall be the same as the point of entry.

PART III

CONFIDENCE-BUILDING MEASURES

1. Pursuant to article IV, paragraph 68, each State Party shall, on a voluntary basis, provide the Technical Secretariat with notification of any chemical explosion using 300 tonnes or greater of TNT-equivalent blasting material detonated as a single explosion anywhere on its territory, or at any place under its jurisdiction or control. If possible, such notification shall be provided in advance. Such notification shall include details on location, time, quantity and type of explosive used, as well as on the configuration and intended purpose of the blast.

2. Each State party shall, on a voluntary basis, as soon as possible after the entry into force of this Treaty provide to the Technical Secretariat, and at annual intervals thereafter update, information related to its national use of all other chemical explosions greater than 300 tonnes TNT-equivalent. In particular, the State Party shall seek to advise:

(*a*) The geographic locations of sites where the explosions originate;

(*b*) The nature of activities producing them and the general profile and frequency of such explosions;

(c) Any other relevant detail, if available; and to assist the Technical Secretariat in clarifying the origins of any such event detected by the International Monitoring System.

3. A State Party may, on a voluntary and mutually acceptable basis, invite representatives of the Technical Secretariat or of other States Parties to visit sites within its territory referred to in paragraphs 1 and 2.

4. For the purpose of calibrating the International Monitoring System, States Parties may liaise with the Technical Secretariat to carry out chemical calibration explosions or to provide relevant information on chemical explosions planned for other purposes.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. INTERNATIONAL MARITIME ORGANIZATION

(a) PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS OF 1976. DONE AT LONDON ON 2 MAY 1996[9]

Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976

The Parties to the present Protocol,

Considering that it is desirable to amend the Convention on Limitation of Liability for establish a simplified procedure for updating the limitation amounts.

Have agreed as follows:

Article 1

For the purposes of this Protocol:

1. "Convention" means the Convention on Limitation of Liability for Maritime Claims, 1976.

2. "Organization" means the International Maritime Organization.

3. "Secretary-General" means the Secretary-General of the Organization.

Article 2

Article 3, subparagraph (*a*), of the Convention is replaced by the following text:

(*a*) Claims for salvage, including, if applicable, any claim for special compensation under article 14 of the International Convention on Salvage 1989, as amended, or contribution in a general average.

Article 3

Article 6, paragraph 1, of the Convention is replaced by the following texts:

1. The limits of liability for claims other than those mentioned in article 7, arising on any distinct occasion, shall be calculated as follows:

(*a*) In respect of claims for loss of life or personal injury,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons;

(ii) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (*i*):

For each ton from 2,001 to 30,000 tons, 800 Units of Account;

For each ton from 30,001 to 70,000 tons 600 Units of Account; and

For each ton in excess of 70,000 tons, 400 Units of Account;

(*b*) In respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons;

(ii) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (*i*):

For each ton from 2,001 to 30,000 tons, 400 Units of Account;

For each ton from 30,001 to 70,000 tons, 300 Units of Account; and

For each ton in excess of 70,000 tons, 200 Units of Account.

Article 4

Article 7, paragraph 1, of the Convention is replaced by the following text:

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

Article 5

Article 8, paragraph 2, of the Convention is replaced by the following text:

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval

or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

(*a*) In respect of article 6, paragraph 1(a), at an amount of:

(i) 30 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (*i*):

For each ton from 2,001 to 30,000 tons, 12,000 monetary units;

For each ton from 30,001 to 70,000 tons, 9,000 monetary units; and

For each ton in excess of 70,000 tons, 6,000 monetary units; and

(*b*) In respect of article 6, paragraph 1(b), at an amount of:

(i) 15 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (*i*):

For each ton from 2,001 to 30,000 tons, 6,000 monetary units;

For each ton from 30,001 to 70,000 tons, 4,500 monetary units; and

For each ton in excess of 70,00 tons, 3,000 monetary units; and

(*c*) In respect of article 7, paragraph 1, at an amount of 2,625,000 monetary units multiplied by the number of passengers which the ship is authorized to carry authorized to its certificate.

Paragraphs 2 and 3 article 6 apply correspondingly to subparagraphs (*a*) and (*b*) of this paragraph.

Article 6

The following text is added as paragraph 3bis in article 15 of the Convention:

3bis Notwithstanding the limit of liability prescribed in paragraph 1 of article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

Article 7

Article 18, paragraph 1, of the Convention in replaced by the following text:

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

(*a*) To exclude the application of article 2, paragraphs 1(d) and (*e*);

(*b*) To exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

Article 8

AMENDMENT OF LIMITS

1. Upon the request of at least on half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits specified in article 6, paragraph 1, article 7, paragraph 1, and article 8, paragraphs 2, of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of the circulation.

3. All Contracting States to the Convention as amended by this Protocol, whether or not members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as amended by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States to the Convention as amended by this Protocol shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting there from, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

6. (*a*) No amendment of the limits this article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.

(*b*) No limit may be increased so as to exceed an amount which corresponds to thc limit laid down in the Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(*c*) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accorded with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one-fourth of the

States that were Contracting States at the time of the adoption of the amendment have communicated to and Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of article 12 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7.
In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 9

1. The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. A State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention.

3. The Convention as amended by this Protocol shall apply only to claims out of occurrences which take place after the entry into force for each State of this Protocol.

4. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Convention and to this Protocol with respect to a State which is a Party to the Convention but not a Party to this Protocol.

FINAL CLAUSES

Article 10

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Protocol shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 by all States.

2. Any State may express its consent to be bound by this Protocol by:

(*a*) Signature without reservation as to ratification, acceptance or approval; or

(*b*) Signature subject to ratification, acceptance or approval fo9llowed by ratification, acceptance or approval; or

(*c*) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, so modified by such amendment.

Article 11

ENTRY INTO FORCE

1. This Protocol shall enter into force ninety days following the date on which ten States have expressed their consent to be bound by it;

2. For any State which expresses its consent to be bound by this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force ninety days following the date of expression of such consent.

Article 12

DENUNCIATION

1. This Protocol may be denounced by any State Party at any time after time the date on which it enters into force for that State Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with article 19 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article 13

REVISION AND AMENDMENT

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Organization shall convene a conference of Contracting States to this Protocol for revising or amending it at the request of not less than one-third of the Contracting Parties.

Article 14

DEPOSITARY

1. This Protocol and any amendments accepted under article 8 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(*a*) Inform all States which have signed or acceded to this Protocol of:

(i) Each new signature or deposit of an instrument together with the date thereof;

(ii) Each declaration and communication under article 8, paragraph 2, of the Convention as amended by this Protocol, and article 8, paragraph 4, of the Convention;

(iii) The date of entry into force of this Protocol.

(iv) Any proposal to amend limits which has been made in accordance with article 8, paragraph 1;

(*v*) Any amendment which ahs been adopted in accordance with article 8, paragraph 4;

(vi) Any amendment deemed to have been accepted under article 8, paragraph 7, together with eth date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;

(vii) The deposit of any instrument of the denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(*b*) Transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 15

LANGUAGES

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE at London this second day of May one thousand nine hundred and ninety-six.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

CONFERENCE RESOLUTIONS

RESOLUTION ON SETTING UP THE HNS FUND

The Conference,

Having adopted the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention),

Considering that before the HNS Convention enters into force and for some time thereafter, it will be necessary to prepare some administrative and organizational measures in order to ensure that, as form the date of entry into force of the Convention, the International Hazardous and Noxious Substances Fund (HNS Fund), to be set up under the Convention, can operate properly.

1. *Requests* the Assembly of the International Oil Pollution Compensation Fund, 1992 (IOPC Fund 1992), set up by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention) to give its Director the following assignments, on the basis that all expenses incurred will be repaid b the HNS Fund:

(*a*) To carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention:

(*b*) To give all necessary assistance for setting-up HNS Fund:

(*c*) To make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization, in accordance with article 44 of the HNS Convention:

(*d*) To hold negotiations with the International Maritime Organization to enable the HNS Fund to conclude agreements as soon as possible on the necessary premises and support services; and

2. *Recommends* that on behalf of the HNS Fund, the IOPC Fund 1992 should hold negotiations with the host Government to ensure that the question of the privileges, immunities and facilities accorded to the HNS Fund is considered and satisfactorily settled by mutual agreement, taking into account the privileges, immunities and facilities currently accorded to the IOPC Fund 1992.

(*b*) PROTOCOL OF 1996 TO AMEND THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER, 1972 AND RESOLUTIONS ADOPTED BY THE SPECIAL MEETING. DONE AT LONDON ON 7 NOVEMBER 1996[10]

The Contracting Parties to this Protocol,

Stressing the need to protect the marine environment and to promote the sustainable use and conservation of marine resources,

Noting in this regard the achievements within the framework of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and especially the evolution towards approaches based on precaution and prevention,

Noting further the contribution in this regard by complementary regional and national instruments which aim to protect the marine environment and which take account of specific circumstances and needs of those regions and States,

Reaffirming the value of a global approach to these matters and in particular the importance of continuing co-operation and collaboration between Contracting Parties in implementing the Convention and the Protocol,

Recognizing that it may de desirable to adopt, on a national or regional level, more stringent measures with respect to prevention and elimination of pollution of the marine environment from dumping at sea than are provided for in international conventions or other types of agreements with a global scope,

Taking into account relevant international agreements and actions, especially the United Nations Convention on the Law of the Sea, the Rio Declaration on Environment and Development and Agenda 21,

Recognizing also the interests and capacities of developing States and in particular small island developing States,

Being convinced that further international action to prevent, reduce and where practicable eliminate pollution of the sea caused by dumping can and must be taken without delay to protect and preserve the marine environment and to manage human activities in such a manner that the marine ecosystem will continue to sustain the legitimate uses of the sea and will continue to meet the needs of present and future generations,

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Protocol:

1. "Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended.

2. "Organization" means the International Maritime Organization.

3. "Secretary-General" means the Secretary-General of the Organization.

4.1 "Dumping means:

.1 any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

.2 any deliberate disposal into the sea of vessels, aircraft, platforms or other manmade structures at sea;

.3 any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and

.4 any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.

.2 "Dumping" does not include:

.1 the disposal into the sea of wastes or other matter incidental to, or derived form the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures;

.2 placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and

.3 notwithstanding paragraph 4.1.4, abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof.

.3 The disposal or storage of wastes or other matter directly arising from or related to the exploration, exploitation and association off-shore processing of seabed mineral resources is not covered by the provisions of this Protocol.

5.1 "Incineration at sea" means the combustion on board a vessel, platform or other manmade structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction.

.2 "Incineration at sea" does not include the incineration of wastes or other matter on board a vessel, platform, or other man-made structure at sea if such wastes or other matter were generated during the normal operation of that vessel, platform or other man-made structure at sea.

6. "Vessels and aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air-cushioned craft and floating craft, whether self-propelled or not.

7. "Sea" means all marine waters other than the internal waters of States, as well as the seabed and the subsoil thereof; it does not include sub-seabed repositories accessed only from land.

8. "Wastes or other matter" means material and substance of any kind, form or description.

9. "Permit" means permission granted in advance and in accordance with relevant measures adopted pursuant to article 4.1.2 or 8.2.

10. "Pollution" means the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

Article 2

OBJECTIVES

Contracting Parties shall individually and collectively protect and preserve the marine environment form all sources of pollution and take effective measures, according to their scientific, technical and economic capabilities, to prevent, reduce and where practicable eliminate pollution caused by dumping or incineration at sea of wastes or other matter. Where appropriate, they shall harmonize their policies in this regard.

Article 3

General obligations

1. In implementing this Protocol, Contracting Parties shall apply a precautionary approach to environmental protection from dumping of wastes or other matter whereby appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects.

2. Taking into account the approach that the polluter should, in principle, bear the cost of pollution, each Contracting Party shall endeavour to promote practices whereby those it has authorized to engage in dumping or incineration at sea bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.

3. In implementing the provisions of this Protocol, Contracting Parties shall act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another.

4. No provision of this Protocol shall be interpreted as preventing Contracting Parties from taking, individually or jointly, more stringent measures in accordance with international law with respect to the prevention, reduction and where practicable elimination of pollution.

Article 4

Dumping of wastes or other matter

1 .1 Contracting Parties shall prohibit the dumping of any wastes or other matter with the exception of those listed in Annex 1.

.2 The dumping of wastes or other matter listed in Annex 1 shall require a permit. Contracting Parties shall adopt administrative or legislative measures to ensure that issuance of permits and permit conditions comply with provisions of Annex 2. Particular attention shall be paid to opportunities to avoid dumping in favour of environmentally preferable alternatives.

2. No provision of this Protocol shall be interpreted as preventing a Contracting Party from prohibiting, insofar as that Contracting Party is concerned, the dumping of wastes or other matter mentioned in Annex 1. That Contracting Party shall notify the Organization of such measures.

Article 5

Incineration at sea

Contracting Parties shall prohibit incineration at sea of wastes or other matter.

Article 6

EXPORT OF WASTES OR OTHER MATTER

Contracting Parties shall not allow the export of wastes or other matter to other countries for dumping or incineration at sea.

Article 7

INTERNAL WATERS

1. Notwithstanding any other provision of this Protocol, this Protocol shall relate to internal waters only to the extent provided for in paragraphs 2 and 3.

2. Each Contracting Party shall at its discretion either apply the provisions of this Protocol or adopt other effective permitting and regulatory measures to control the deliberate disposal of wastes or other matter in marine internal waters where such disposal would be "dumping" or "incineration at sea" within the meaning of article 1, if conducted at sea.

3. Each Contracting Party should provide the Organization with information on legislation and institutional mechanisms regarding implementation, compliance and enforcement in marine internal waters. Contracting Parties should also use their best efforts to provide on a voluntary basis summary reports on the type of nature of the materials dumped in marine internal waters.

Article 8

EXCEPTIONS

1. The provisions of article 4.1 and 5 shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be conducted so as to minimize the likelihood of damage to human or marine life and shall be reported forthwith to the Organization.

2. A Contracting Party may issue as an exception to article 4.1 and 5, in emergencies posing an unacceptable threat to human health, safety, or the marine environment and admitting of no other feasible solution. Before doing so the Contracting Party shall consult any other country or countries that are likely to be affected and the Organization which, after consulting other Contracting Parties, and competent international organizations as appropriate, shall, in accordance with article 18.6 promptly recommend to the Contracting Party the most appropriate procedures to adopt. The Contracting Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organization of the action it takes. The Contracting Parties pledge themselves to assist one another in such situations.

3. Any Contracting Party may waive its rights under paragraph 2 at the time of, or subsequent to ratification of, or accession to this Protocol.

Article 9

ISSUANCE OF PERMITS AND REPORTING

1. Each Contracting Party shall designate an appropriate authority or authorities to:

.1 issue permits in accordance with this Protocol;

.2 keep records of the nature of quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping; and

.3 monitor individually, or in collaboration with other Contracting Parties and competent international organizations, the condition of the sea for the purposes of this Protocol.

2. The appropriate authority or authorities of a Contracting Party shall issue permits in accordance with this Protocol in respect of wastes or other matter intended for dumping or, as provided for in article 8.2, incineration at sea:

.1 loaded in its territory; and

.2 loaded onto a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not a Contracting Party to this Protocol.

3. In issuing permits, the appropriate authority or authorities shall comply with the requirements of article 4, together with such additional criteria, measures and requirements as they may consider relevant.

4. Each Contracting Party, directly or through a secretariat established under a regional agreement, shall report to the Organization and where appropriate to other Contracting Parties:

.1 the information specified in paragraphs 1.2 and 1.3;

.2 the administrative and legislative measures taken to implement the provisions of this Protocol, including a summary of enforcement measures; and

.3 the effectiveness of the measures referred to in paragraph 4.2 and any problems encountered in their application.

The information referred to in paragraph 1.2 and 1.3 shall be submitted on an annual basis. The information referred to in paragraph 4.2 and 4.3 shall be submitted on a regular basis.

5. Reports submitted under paragraphs 4.2 and 4.3 shall be evaluated by an appropriate subsidiary body as determined by the Meeting of Contracting Parties. This body will report its conclusions to an appropriate Meeting or Special Meeting of Contracting Parties.

Article 10

APPLICATION AND ENFORCEMENT

1. Each Contracting Party shall apply the measures required to implement this Protocol to all:

.1 vessels and aircraft registered in its territory or flying its flag;

.2 vessels and aircraft loading in its territory the wastes or other matter which are to be dumped or incinerated at sea; and

.3 vessels, aircraft and platforms or other man-made structures believe to be engaged in dumping or incineration at sea in areas within which it is entitled to exercise jurisdiction in accordance with international law.

2. Each Contracting Party shall take appropriate measures in accordance with international law to prevent and if necessary punish acts contrary to the provisions of this Protocol.

3. Contracting Parties agree to co-operate in the development of procedures for the effective application of this Protocol in areas beyond the jurisdiction of any State, including procedures for the reporting of vessels and aircraft observed dumping or incinerating at sea in contravention of this Protocol.

4. This Protocol shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each Contracting Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol and shall inform the Organization accordingly.

5. A State may, at the time it expresses to consent to be bound by this Protocol, or at any time thereafter, declare that it shall apply the provisions of this Protocol to its vessels and aircraft referred to in paragraph 4, recognizing that only that State may enforce those provisions against such vessels and aircraft.

Article 11

COMPLIANCE PROCEDURES

1. No later than two years after the entry into force of this Protocol, the Meeting of Contracting Parties shall establish those procedures and mechanisms necessary to assess and promote compliance with this Protocol. Such procedures and mechanisms shall be developed with a view to allowing for the full and open exchange of information, in a constructive manner.

After full consideration of any information submitted pursuant to this Protocol and any recommendations made through procedures or mechanisms established under paragraph 1, the Meeting of Contracting Parties may offer advice, assistance or co-operation to Contracting Parties and non-Contracting Parties.

Article 12

REGIONAL COOPERATION

In order to further objectives of this Protocol, Contracting Parties with common interests to protect the marine environment in a given geographical area shall endeavour, taking into account characteristic regional features, to enhance

regional agreements consistent with this Protocol for the prevention, reduction and where practicable elimination of pollution caused by dumping or incineration at sea of wastes or other matter. Contracting Parties shall seek to co-operate with the parties to regional agreements in order to develop harmonized procedures to be followed by Contracting Parties to the different conventions concerned.

Article 13

TECHNICAL COOPERATION AND ASSISTANCE

1. Contracting Parties shall, through collaboration within the Organization and in co-ordination with other competent international organizations, promote bilateral and multilateral support for the prevention, reduction and where practicable elimination of pollution caused by dumping as provided for in this Protocol to those Contracting Parties that request if for:

.1 training of scientific and technical personnel for research, monitoring and enforcement including as appropriate the supply of necessary equipment and facilities, with a view to strengthening national capabilities;

.2 advice on implementation of this Protocol;

.3 information and technical co-operation relating to waste minimization and clean production processes;

.4 information and technical co-operation relating to the disposal and treatment of waste other measures to prevent, reduce and where practicable eliminate pollution caused by dumping; and

.5 access to and transfer of environmentally sound technologies and corresponding know-how, in particular to developing countries and countries in transition to market economies, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights as well as the special needs of developing countries and countries in transition to market economies.

2. The Organization shall perform the following functions:

.1 forward requests from Contracting Parties for technical co-operation to other Contracting Parties, taking into account such factors as technical capabilities;

.2 co-ordinate requests for assistance with other competent international organizations, as appropriate; and

.3 subject to the availability of adequate resources, assist developing countries and those in transition to market economies, which have declared their intention to become Contracting Parties to this Protocol, to examine the means necessary to achieve full implementation.

Article 14

SCIENTIFIC AND TECHNICAL RESEARCH

1. Contracting Parties shall take appropriate measures to promote and facilitate scientific and technical research on the prevention, reduction and where practicable elimination of pollution by dumping and other sources of marine pollution relevant to this Protocol. In particular, such research should include observation, measurement, evaluation and analysis of pollution by scientific methods.

2. Contracting Parties shall, to achieve the objectives of this Protocol, promote the availability of relevant information to other Contracting Parties who request it on:

.1 scientific and technical activities and measures undertaken in accordance with this Protocol;

.2 marine scientific and technological programmes and their objectives; and

.3 the impacts observed from the monitoring and assessment conducted pursuant to article 9.1.3.

Article 15

RESPONSIBILITY AND LIABILITY

In accordance with the principles of international law regarding State responsibility for damage to the environment of other States or to any other area of the environment, the Contracting Parties undertake to develop procedures regarding liability arising from the dumping or incineration at sea of wastes or other matter.

Article 16

SETTLEMENT OF DISPUTES

1. Any disputes regarding the interpretation or application of this Protocol shall be resolved in the first instance through negotiation, mediation or conciliation, or other peaceful means chosen by parties to the dispute.

2. If no resolution is possible within twelve months after one Contracting Parties has notified another that a dispute exists between them, the dispute shall be settled, at the request of a party to the dispute, by means of the Arbitral Procedure set forth in Annex 3, unless the parties to the dispute agree to use one of the procedures listed in paragraph 1 of Article 287 of the 1982 United Nations Convention on the Law of the Sea. The parties to the dispute may so agree, whether or not they are also States Parties to the 1982 United Nations Convention on the Law of the Sea.

3. In the event an agreement to use one of the procedures listed in paragraph 1 of Article 287 of the 1982 United Nations Convention on the Law of the Sea is reached, the provisions set forth in Part XV of that Convention that are related to the chosen procedure would also apply, mutatis mutandis.

4. The twelve month period referred to in paragraph 2 may be extended for another twelve months by mutual consent of the parties concerned.

5. Notwithstanding paragraph 2, any State may, at the time it expresses its consent to be bound by this Protocol, notify the Secretary-General that, when it is a party to a dispute about the interpretation or application of article 3.1. or 3.2, its consent will be required before the dispute may be settled my means of the Arbitral Procedure set forth in Annex 3.

Article 17

International cooperation

Contracting Parties shall promote the objectives of this Protocol within the competent international organizations.

Article 18

Meetings of Contracting Parties

1. Meetings of Contracting Parties or Special Meetings of Contracting Parties shall keep under continuing review the implementation of this Protocol and evaluate its effectiveness with a view to identifying means of strengthening action, where necessary, to prevent, reduce and where practicable eliminate pollution caused by dumping and incineration at sea of wastes or other matter. To these ends, Meetings of Contracting Parties or Special Meetings of Contracting Parties may:

.1 review and adopt amendments to this Protocol in accordance with articles 21 and 22;

.2 establish subsidiary bodies, as required, to consider any matter with a view to facilitating the effective implementation of this Protocol;

.3 invite appropriate expert bodies to advise the Contracting Parties or the Organization on matters relevant to this Protocol;

.4 promote co-operation with competent international organizations concerned with the prevention and control of pollution;

.5 consider the information made available pursuant to article 9.4;

.6 develop or adopt, in consultation with competent international organizations, procedures referred to in article 8.2, including basic criteria for determining exceptional and emergency situations, and procedures for consultative advice and the safe disposal of matter at sea in such circumstances;

.7 consider and adopt resolutions; and

.8 consider any additional action that may be required.

2. The Contracting Parties at their first Meeting shall establish rules of procedure as necessary.

Article 19

DUTIES OF THE ORGANIZATION

1. The Organization shall be responsible for Secretariat duties in relation to this Protocol. Any Contracting Party to this Protocol not being a member of this Organization shall make an appropriate contribution to the expenses incurred by the Organization in performing these duties.

2. Secretariat duties necessary for the administration of this Protocol include:

.1 convening Meetings of Contracting Parties once per year, unless otherwise decided by Contracting Parties, and Special Meetings of Contracting Parties at any time on the request of two-thirds of the Contracting Parties;

.2 providing advice on request on the implementation of this Protocol and on guidance and procedures developed thereunder;

.3 considering enquiries by, and information from Contracting Parties, consulting with them and with the competent international organizations, and providing recommendations to Contracting Parties on questions related to, but not specifically covered by, this Protocol;

.4 preparing and assisting, in consultation with Contracting Parties and the competent international organizations, in the development and implementation of procedures referred to in article 18.6;

.5 conveying to the Contracting Parties concerned all notifications received by the Organization in accordance with this Protocol; and

.6 preparing, every two years, a budget and a financial account for the administration of this Protocol which shall be distributed to all Contracting Parties.

3. The Organization shall, subject to the availability of adequate resources, in addition to the requirements set out in article 13.2.3.

.1 collaborate in assessments of the state of the marine environment; and

.2 co-operate with competent international organizations concerned with the prevention and control of pollution.

Article 20

ANNEXES

Annexes to this Protocol form an integral part of this Protocol.

Article 21

AMENDMENT OF THE PROTOCOL

1. Any Contracting Party may propose amendments to the articles of this Protocol. The text of a proposed amendment shall be communicated to Contracting Parties by the Organization at least six months to its consideration at a Meeting of Contracting Parties or a Special Meeting of Contracting Parties.

2. Amendments to the articles of this Protocol shall be adopted by a two-thirds majority vote of the Contracting Parties which are present and voting at the Meeting of Contracting Parties or Special Meeting of Contracting Parties designated for this purpose.

3. An amendment shall enter into force for the Contracting Parties which have accepted it on the sixtieth day after two-thirds of the Contracting Parties shall have deposited an instrument of acceptance of the amendment with eh Organization. Thereafter the amendment shall enter into force for any Contracting Party on the sixtieth day after the date on which that Contracting Party has deposited its instrument of acceptance of the amendment.

4. The Secretary-General shall inform Contracting Parties of any amendments adopted at Meetings of Contracting Parties and of the date on which such amendments enter into force generally and or each Contracting Party.

5. After entry into force of an amendment to this Protocol, any State that becomes a Contracting Party to this Protocol shall become a Contracting Party to this Protocol as amended, unless two-thirds of the Contracting Parties present and voting at the Meeting or Special Meeting of Contracting Parties adopting the amendment agree otherwise.

Article 22

AMENDMENT OF THE ANNEXES

1. Any Contracting Party may propose amendments to the Annexes to this Protocol. The text of a proposed amendment shall be communicated to Contracting Parties by the Organization at least six months prior to its consideration by a Meeting of Contracting Parties or Special Meeting of Contracting Parties.

2. Amendments to the Annexes other than Annex 3 will be based on scientific or technical considerations and may take into account legal, social and economic factors as appropriate. Such amendments shall be adopted by a two-thirds majority vote of the Contracting Parties present and voting at a Meeting of Contracting Parties or Special Meeting of Contracting Parties designated for this purpose.

3. The Organization shall without delay communicate to Contracting Parties amendments to the Annexes that have been adopted at a Meeting of Contracting Parties or Special Meeting of Contracting Parties.

4. Except as provided in paragraph 7, amendments to the Annexes shall enter into force for each Contracting Party immediately on notification of its acceptance to the Organization or 100 days after the date of their adoption at a Meeting of Contracting Parties, if that is later, except for those Contracting Parties which before the end of the 100 days make a declaration that they are not able to accept the amendment at that time. A Contracting Party may at any time substitute an acceptance for a previous declaration of objection and the amendment previously objected to shall thereupon enter into force for that Contracting Party.

5. The Secretary-General shall without delay notify Contracting Parties of instruments of acceptance or objection deposited with the Organization.

6. A new Annex or an amendment to an Annex which is related to an amendment to the articles of this Protocol shall not enter into force until such time as the amendment to the articles of this Protocol enters into force.

7. With regard to amendments to Annex 3 concerning the Arbitral Procedure and with regard to the adoption and entry into force of new Annexes the procedures on amendments to the articles of this Protocol shall apply.

Article 23

Relationship between the Protocol and the Convention

This Protocol will supersede the Convention as between Contracting Parties to this Protocol which are also Parties to the Convention.

Article 24

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature by any State at the Headquarters of the Organization from 1 April 1997 to 31 March 1998 and shall thereafter remain open for accession by any State.

2. States may become Contracting Parties to this Protocol by:

.1 signature not subject to ratification, acceptance or approval: or

.2 signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

.3 accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Article 25

Entry into force

1. This Protocol shall enter into force on the thirtieth day following the date on which:

.1 at least 26 States have expressed their consent to be bound by this Protocol in accordance with article 24; and

.2 at least 15 Contracting Parties to the Convention are included in the number of States referred to in paragraph 1.1.

2. For each State that has expressed its consent to be bound by this Protocol in accordance with article 24 following the date referred to in paragraph 1, this Protocol shall enter into force on the thirtieth day after the date on which such State expressed its consent.

Article 26

TRANSITIONAL PERIOD

1. Any State that was not a Contracting Party to the Convention before 31 December 1996 and that expresses its consent to be bound by this Protocol prior to its entry into force or within five years after its entry into force may, at the time it expresses its consent, notify the Secretary-General that, for reasons described in the notification, it will not be able to comply with specific provisions of this Protocol other than those provided in paragraph 2, for a transitional period that shall not exceed that described in paragraph 4.

2. No notification made under paragraph 1 shall affect the obligations of a Contracting Party to this Protocol with respect to incineration at sea or the dumping of radioactive wastes or other radioactive matter.

3. Any Contracting Party to this Protocol that has notified the Secretary-General under paragraph 1 that, for the specified transitional period, it will not be able to comply, in part or in whole, with article 4.1 or article 9 shall nonetheless during that period prohibit the dumping of wastes or other matter for which it has not issued a permit, use its best efforts to adopt administrative or legislative measures to ensure that issuance of permits and permit conditions comply with the provisions of Annex 2, and notify the Secretary-General of any permits issued.

4. Any transitional period specified in a notification made under paragraph 1 shall not extend beyond five years after such notification is submitted.

5. Contracting Parties that have made a notification under paragraph 1 shall submit to the first Meeting of Contracting Parties occurring after deposit of their instrument of ratification, acceptance, approval or accession a programme and timetable to achieve full compliance with this Protocol, together with any requests for relevant technical co-operation and assistance in accordance with article 13 of this Protocol.

6. Contracting Parties that have made a notification under paragraph 1 shall establish procedures and mechanisms for the transitional period to implement and monitor submitted programmes designed to achieve full compliance with this Protocol. A report on progress toward compliance shall be submitted by such Contracting Parties to each Meeting of Contracting Parties held during their transitional period for appropriate action.

Article 27

WITHDRAWAL

1. Any Contracting Party may withdraw from this Protocol at any time after the expiry of two years from the date on which this Protocol enters into force for that Contracting Party.

2. Withdrawal shall be effected by the deposit of an instrument of withdrawal with the Secretary-General.

3. A withdrawal shall take effect one year after receipt by the Secretary-General of the instrument of withdrawal or such longer period as may be specified in that instrument.

Article 28

DEPOSITARY

1. This Protocol shall be deposited with the Secretary-General.

2. In addition to the functions specified in articles 10.5, 16.5, 21.4, 22.5 and 26.5, the Secretary-General shall:

.1 inform all States which have signed this Protocol or acceded thereto of:

.1 each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

.2 the date of entry into force of this Protocol; and

.3 the deposit of any instrument of withdrawal from this Protocol together with the date on which it was received and the date on which the withdrawal takes effect.

.2 transmit certified copies of this Protocol to all States which have signed this Protocol or acceded thereto.

.3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 29

AUTHENTIC TEXTS

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Protocol.

DONE at London, this seventh day of November, one thousand nine hundred and ninety-six.

ANNEX 1

Wastes or other matter that may be considered for dumping

1. The following wastes or other matter are those that may be considered for dumping being mindful of the Objectives and General Obligations of this Protocol set out in articles 2 and 3:

.1 dredged material;

.2 sewage sludge;

.3 fish waste, or material resulting from industrial fish processing operations;

.4 vessels and platforms or other man-made structures at sea;

.5 inert, inorganic geological material;

.6 organic material of natural origin; and

.7 bulky items primarily comprising iron, steel, concrete and similarly unharmful materials for which the concern in physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.

2. The wastes or other matter listed in paragraphs 1.4 and 1.7 may be considered for dumping, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent and provided that the material dumped poses no serious obstacle to fishing or navigation.

3. Notwithstanding the above, materials listed in paragraphs 1.1 to 1.7 containing levels of radioactivity greater than de minimis (exempt) concentrations as defined by the IAEA ad adopted by Contracting Parties, shall not be considered eligible for dumping; provided further that within 25 years of 20 February 1994, and at each 25 year interval thereafter, Contracting Parties shall complete a scientific study relating to all radioactive wastes and other radioactive matter other than high level wastes or matter, taking into account such other factors as Contracting Parties consider appropriate and shall review the prohibition on dumping of such substances in accordance with the procedure set forth in article 22.

ANNEX 2

Assessment of wastes or other matter that may be considered for dumping

General

1. The acceptance of dumping under certain circumstances shall not remove the obligations under this Annex to make further attempts to reduce the necessity for dumping.

Waste prevention audit

2. The initial stages in assessing alternatives to dumping should, as appropriate, include an evaluation of:

.1 types, amounts and relative hazard of wastes generated;

.2 details of the production process and the sources of wastes within that process; and

.3 feasibility of the following waste reduction/prevention techniques:

.1 product reformulation;

.2 clean production technologies;

.3 process modification;

.4 input substitution; and

.5 on-site, closed-loop recycling.

3. In general terms, if the required audit reveals that opportunities exist for waste prevention at source, an applicant is expected to formulate and implement a waste prevention strategy, in collaboration with relevant local and national agencies, which includes specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met. Permit issuance or renewal decisions shall assure compliance with any resulting waste reduction and prevention requirements.

4. For dredged material and sewage sludge, the goal of waste management should be to identify and control the sources of contamination. This should be achieved through implementation of waste prevention strategies and requires collaboration between the relevant local and national agencies involved with the control of point and non-point sources of pollution. Until this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.

CONSIDERATION OF WASTE MANAGEMENT OPTIONS

5. Applications to dump wastes or other matter shall demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:

.1 re-use;

.2 off-site recycling;

.3 destruction of hazardous constituents;

.4 treatment to reduce or remove the hazardous constituents; and

.5 disposal on land, into air and in water.

6. A permit to dump wastes or other matter shall be refused if the permitting authority determines that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping and the alternatives.

CHEMICAL, PHYSICAL AND BIOLOGICAL PROPERTIES

7. A detailed description and characterization of the waste is an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped. If a waste is so poorly characterized that proper assessment cannot be made of its potential impacts on human health and environment, that waste shall not be dumped.

8. Characterization of the wastes and their constituents shall take into account:

.1 origin, total amount, form and average composition;

.2 properties: physical, chemical, biochemical and biological;

.3 toxicity;

.4 persistence: physical, chemical and biological; and

.5 accumulation and biotransformation in biological materials or sediments.

ACTION LIST

9. Each Contracting Party shall develop a national Action List to provide a mechanism for screening candidate wastes and their constituents on the basis of their potential effects on human health and the marine environment. In selecting substances for consideration in an Action List, priority shall be given to toxic, persistent and bioaccumulative substances from anthropogenic sources (e.g., cadmium, mercury, organohalogens, petroleum hydrocarbons, and, whenever relevant, arsenic lead, copper, zinc, beryllium, chro-

mium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organohalogens). An Action List can also be used as a trigger mechanism for further waste prevention considerations.

10. An Action List shall specify an upper level and may also specify a lower level. The upper level should be set as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem. Application of an Action List will result in three possible categories of waste:

.1 wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping through the use of management techniques or processes;

.2 wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping; and

.3 wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping can be determined.

Dump-site selection

11. Information required to select a dump-site shall include:

.1 physical, chemical and biological characteristics of the water-column and the seabed;

.2 location of amenities, values and other uses of the sea in the area under consideration;

.3 assessment of the constituent fluxes associated with dumping in relation to existing fluxes of substances in the marine environment; and

.4 economic and operational feasibility.

Assessment of potential effects

12. Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e., the "Impact Hypothesis". It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.

13. The assessment for dumping should integrate information on waste characteristics, conditions at the propose dump-site(s), fluxes, and proposed disposal techniques and specify the potential effects on human health, living resources, amenities and other legitimate uses of the sea. It should define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.

14. An analysis of each disposal option should be considered in the light of a comparative assessment of the following concerns: human health risks, environmental costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option should not be considered further. In addition, if the interpretation of the comparative assessment shows the dumping option to be less preferable, a permit for dumping should not be given.

15. Each assessment should conclude with a statement supporting a decision to issue or refuse a permit for dumping.

Monitoring

16. Monitoring is used to verify that permit conditions are met — compliance monitoring — and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health — field monitoring. It is essential that such monitoring programmes have clearly defined objectives.

PERMIT AND PERMIT CONDITIONS

17. A decision to issue a permit should only be made if all impact evaluations are completed and the monitoring requirements are determined. The provisions of the permit shall ensure, as far as practicable, that environmental disturbance and detriment are minimized and the benefits maximized. Any permit issued shall contain data and information specifying:

.1 the types and sources of materials to be dumped;

.2 the location of the dump-site(s);

.3 the method of dumping; and

.4 monitoring and reporting requirements.

18. Permits should be reviewed at regular intervals, taking into account the results of monitoring and the objectives of monitoring programmes. Review of monitoring results will indicate whether field programmes need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits. This provides an important feedback mechanism for the protection of human health and the marine environment.

ANNEX 3

Arbitral procedure

Article 1

1. An Arbitral Tribunal (hereinafter referred to as the "Tribunal") shall be established upon the request of a Contracting Party addressed to another Contracting Party in application of article 16 of this Protocol. The request for arbitration shall consist of a statement of the case together with any supporting documents.

2. The requesting Contracting Party shall inform the Secretary-General of:

.1 its request for arbitration; and

.2 the provisions of this Protocol the interpretation or application of which is, in its opinion, the subject of disagreement.

3 The Secretary-General shall transmit this information to all Contracting States.

Article 2

1. The Tribunal shall consist of a single arbitrator is so agreed between the parties to the dispute within 30 days from the date of receipt of the request for arbitration.

2. In the case of the death, disability or default of the arbitrator, the parties to a dispute may agree upon a replacement within 30 days of such death, disability or default.

Article 3

1. Where the parties to a dispute do not agree upon a Tribunal in accordance with article 2 of this Annex, the Tribunal shall consist of three members:

.1 one arbitrator nominated by each party to the dispute: and

.2 a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.

2. If the Chairman of a Tribunal is not nominated within 30 days of nomination of the second arbitrator, the parties to a dispute shall, upon the request of one party, submit to the Secretary-General within a further period of 30 days an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list as soon as possible. He shall not select a Chairman who is or has been a national of one party to the dispute except with the consent of the other party to the dispute.

3. If one party to a dispute fails to nominate an arbitrator as provided in paragraph 1.1 within 60 days from the date of receipt of the request for arbitration, the other party may request the submission to the Secretary-General within a period of 30 days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the party which has not nominated an arbitrator to do so. If this party does not nominate an arbitrator within 15 days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.

4. In the case of the death, disability or default of an arbitrator, the party to the dispute who nominated him shall nominate a replacement within 30 days of such death, disability or default. If the party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the Chairman, a replacement shall be nominated in accordance with the provision of paragraphs 1.2 and 2 within 90 days of such death, disability or default.

5. A list of arbitrators shall be maintained by the Secretary-General and composed of qualified persons nominated by the Contracting Parties. Each Contracting Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

Article 4

The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

Article 5

Each party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the arbitration shall be borne equally by the parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the parties.

Article 6

Any contracting Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the Tribunal and at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral argument on the matters giving rise to its intervention, in accordance with procedures established pursuant to article 7 of this Annex, but shall have no rights with respect to the composition of the Tribunal.

Article 7

A Tribunal established under the provision of this Annex shall decide its own rules of procedure.

Article 8

1. Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a party to the dispute shall not constitute an impediment to the Tribunal reaching a decision. In case of equal voting, the vote of the Chairman shall be decisive.

2. The parties to the dispute shall facilitate the work of the Tribunal and in particular shall, in accordance with their legislation and using all means at their disposal:

.1 provide the Tribunal with all necessary documents and information; and

.2 enable the Tribunal to enter their territory, to hear witnesses or experts, and to visit the scene.

3. The failure of a party to the dispute to comply with the provisions of paragraph 2 shall not preclude the Tribunal from reaching a decision and rendering an award.

Article 9

The Tribunal shall render its award within five months from the time its is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the Tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretary-General who shall inform the Contracting Parties. The parties to the dispute shall immediately comply with the award.

2. WORLD INTELLECTUAL PROPERTY ORGANIZATION

(*a*) PERFORMANCES AND PHONOGRAMS TREATY (1996). DONE AT GENEVA ON 20 DECEMBER 1996.[11]

PREAMBLE

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms,

Recognizing the need to maintain a balance between the rights of performers and producers of phonograms and the larger public interest, particularly education, research and access to information,

Have agreed as follows:

CHAPTER I

General provisions

Article 1

RELATION TO OTHER CONVENTIONS

1. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Pro-

tection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the "Rome Convention").

2. Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.12

3. This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

Article 2

DEFINITIONS

For the purpose of this Treaty:

(*a*) "Performers" are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(*b*) "Phonogram" means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;13

(*c*) "Fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

(*d*) "Producer of a phonogram" means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;

(*e*) "Publication" of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the rightholder, and provided that copies are offered to the public in reasonable quantity;14

(*f*) "Broadcasting" means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

(*g*) "Communication to the public" of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of article 15, "communication to the public", includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

Article 3

BENEFICIARIES OF PROTECTION UNDER THIS TREATY

1. Contracting Parties shall accord the protection provided under this Treaty to the performers and producers of phonograms who are nationals of other Contracting Parties.

2. The nationals of other Contracting Parties shall be understood to be those performers or producers of phonograms who would meet the criteria for eligibility for protection provided under the Rome Convention, were all the Contracting Parties to this Treaty Contracting States of that Convention. In respect of these criteria of eligibility, Contracting Parties shall apply the relevant definitions in article 2 of this Treaty.[15]

3. Any Contracting Party availing itself of the possibilities provided in article 5(3) of the Rome Convention or, for the purpose of article 5 of the same Convention, article 17 thereof shall make a notification as foreseen in those provisions to the Director General of the World Intellectual Property Organization.[16]

Article 4

NATIONAL TREATMENT

1. Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty, and to the right to equitable remuneration provided for in article 15 of this Treaty.

2. The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the reservations permitted by article 15(3) of this Treaty.

CHAPTER II

Rights of performers

Article 5

MORAL RIGHTS OF PERFORMERS

1. Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

2. The rights granted to a performer in accordance with paragraph 1 shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

3. The means of redress for safeguarding the rights granted under this article shall be governed by the legislation of the Contracting Party where protection is claimed.

Article 6

ECONOMIC RIGHTS OF PERFORMERS IN THEIR UNFIXED PERFORMANCES

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

(i) The broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

(ii) The fixation of their unfixed performances.

Article 7

RIGHT OF REPRODUCTION

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in phonograms, in any manner or for.[17]

Article 8

RIGHT OF DISTRIBUTION

1. Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership.

2. Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.[18]

Article 9

RIGHT OF RENTAL

1. Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in phonograms as determined in the national law of Contacting Parties, even after distribution of them by, or pursuant to, authorization by the performer.

2. Notwithstanding the provisions of paragraph 1, a Contracting Party that, on 15 April 1994, had and continues to have in force a system of equitable remuneration of performers for the rental of copies of their performances fixed in phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive right of reproduction of performers.[19]

Article 10

RIGHT OF MAKING AVAILABLE OF FIXED PERFORMANCES

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

CHAPTER III

Rights of producers of phonograms

Article 11

RIGHT OF REPRODUCTION

Producers of phonograms shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their phonograms, in any manner or form.[20]

Article 12

RIGHT OF DISTRIBUTION

1. Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their phonograms through sale or other transfer of ownership.

2. Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph 1 applies after the first sale or other transfer of ownership of the original or a copy of the phonogram with the authorization of the producer of the phonogram.[21]

Article 13

RIGHT OF RENTAL

1. Producers of phonograms shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their phonograms, even after distribution of them by, or pursuant to, authorization by the producer.

2. Notwithstanding the provisions of paragraph 1, a Contracting Party that, on 15 April 1994, had and continues to have in force a system of equitable remuneration of producers of phonograms for the rental of copies of their phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive right of reproduction of producers of phonograms.[22]

Article 14

RIGHT OF MAKING AVAILABLE OF PHONOGRAMS

Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

CHAPTER IV

Common provisions

Article 15

RIGHT TO REMUNERATION FOR BROADCASTING AND COMMUNICATION TO THE PUBLIC

1. Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

2. Contracting Parties may establish in their national legislation that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. Contracting Parties may enact national legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

3. Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph 1 only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all.

4. For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.[23,26]

Article 16

LIMITATIONS AND EXCEPTIONS

1. Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

2. Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonable prejudice the legitimate interests of the performer or of the producer of the phonogram.[25,26]

Article 17

TERM OF PROTECTION

1. The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed in a phonogram.

2. The term of protection to be granted to producers of phonograms under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the fixation was made.

Article 18

OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.

Article 19

OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:

(i) To remove or alter any electronic rights management information with authority;

(ii) To distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

2. As used in this article, "rights management information" means information which identifies the performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and conditions of use of the performance or phonogram, and any numbers or codes that represent such information, when ay of these items of information is attached to a copy of a fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public.[27]

Article 20

FORMALITIES

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

Article 21

RESERVATIONS

Subject to the provisions of article 15(3), no reservations to this Treaty shall be permitted.

Article 22

APPLICATION IN TIME

1. Contracting Parties shall apply the provisions of article 18 of the Bene Convention, mutates mutandis, to the rights of performers and producers of phonograms provided for in this Treaty.

2. Notwithstanding paragraph (1), a Contracting Party may limit the application of article 5 of this Treaty to performances which occurred after the entry into force of this Treaty for that Party.

Article 23

PROVISIONS ON ENFORCEMENT OF RIGHTS

1. Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

2. Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

CHAPTER V

Administrative and final clauses

Article 24

ASSEMBLY

1. (*a*) The Contracting Parties shall have an Assembly.

(*b*) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(*c*) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

2. (*a*) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(*b*) The Assembly shall perform the function allocated to it under article 26(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(*c*) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3. (*a*) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(*b*) Any Contacting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

4. The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

5. The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 25

INTERNATIONAL BUREAU

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 26

ELIGIBILITY FOR BECOMING PARTY TO THE TREATY

1. Any State member of WIPO may become party to this Treaty.

2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

3. The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 27

RIGHTS AND OBLIGATIONS UNDER THE TREATY

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 28

SIGNATURE OF THE TREATY

This Treaty shall be open for signature until December 31, 12997, by any State Member of WIPO and by the European Community.

Article 29

ENTRY INTO FORCE OF THE TREATY

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director of WIPO.

Article 30

EFFECTIVE DATE OF BECOMING PARTY TO THE TREATY

This Treaty shall bind

(i) The 30 States referred to in article 29, from the date on which this Treaty has entered into force;

(ii) Each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;

(iii) The European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) Any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 31

DENUNCIATION OF THE TREATY

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 32

LANGUAGES OF THE TREATY

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

2. An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purpose of this paragraph, "interested party" means any State member of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 33

DEPOSITARY

The Director General of WIPO is the depositary of this Treaty.

Provisions of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) (1961) referred to in the WIPO Performances & Phonograms Treaty

Article 4[28]

[PERFORMANCES PROTECTED. POINTS OF ATTACHMENT FOR PERFORMERS]

Each Contracting State shall grant national treatment to performers if any of the following conditions is met:

(*a*) The performance takes place in another Contracting State;

(*b*) The performance is incorporated in a phonogram which is protected under article 5 of this Convention;

(*c*) The performance, not being fixed on a phonogram, is carried by a broadcast which is protected by article 6 of this Convention.

Article 5[29]

[PROTECTED PHONOGRAMS; 1. POINTS OF ATTACHMENT FOR PRODUCERS OF PHONOGRAMS; 2. SIMULTANEOUS PUBLICATION; 3. POWER TO EXCLUDE CERTAIN CRITERIA]

1. Each Contracting State shall grant national treatment to producers of phonograms if any of the following conditions is met:

(*a*) The producer of the phonogram is a national of another Contracting State (criterion of nationality);

(*b*) The first fixation of the sound was made in another Contracting State (criterion of fixation);

(*c*) The phonogram was first published in another Contracting State (criterion of publication).

2. If a phonogram was first published in a non-contracting State but if it was also published, within thirty days of its first publication, in a Contracting State (simultaneous publication), it shall be considered as first published in the Contracting State.

3. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.[30]

Article 16[31]

[RESERVATIONS]

1. Any State, upon becoming party to this Convention, shall be bound by all the obligations and shall enjoy all the benefits thereof. However, a State may at any time, in a notification deposited with the Secretary-General of the United Nations, declare that:

(*a*) As regards Article 12:

(i) It will not apply the provisions of that Article;

(ii) It will not apply the provisions of that Article in respect of certain uses;

(iii) As regards phonograms the producer of which is not a national of another Contracting State, it will apply that Article;

(iv) As regards phonograms the producer of which is not a national of another Contracting State, it will limit the protection provided for by that Article to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed by a national of the State making the declaration; however, the fact that the Con-

tracting State of which the producer is a national does not grant the protection to the same beneficiary or beneficiaries as the State making the declaration shall not be considered as a difference in the extent of the protection...

Article 17[32]

[CERTAIN COUNTRIES APPLYING ONLY THE "FIXATION" CRITERION]

Any State which, on 26 October 1961, grants protection to producers of phonograms solely on the basis of the criterion of fixation may, by a notification deposited with the Secretary-General of the United Nations at the time of ratification, acceptance or accession, declare that it will apply, for the purposes of Article 5, the criterion of fixation alone and, for the purposes of paragraph 1(a)(iii) and (iv) of Article 16, the criterion of fixation instead of the criterion of nationality.

Article 18[33]

[WITHDRAWAL OF RESERVATIONS]

Any State which has deposited a notification under paragraph 3 of article 5, paragraph 2 of article 6, paragraph 1 of article 16 or article 17, may, by a further notification deposited with the Secretary-General of the United Nations, reduce its scope or withdraw it.

(*b*) COPYRIGHT TREATY (1966). DONE AT GENEVA ON 20 DECEMBER, 1996[34]

Preamble

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of authors in their literary and artistic works in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works,

Emphasizing the outstanding significance of copyright protection as an incentive for literary and artistic creation,

Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention,

Have agreed as follows:

Article 1

Relation to the Berne Convention

1. This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties.

2. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of literary and Artistic Works.

3. Hereinafter, "Berne Convention" shall refer to the Paris Act of 24 July, 1971, of the Berne Convention for the Protection of Literary and Artistic Works.

4. Contracting Parties shall comply with articles 1 to 21 and the Appendix of the Berne Convention.[35]

Article 2

Scope of copyright protection

Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 3

Application of articles 2 to 6 of the Berne Convention

Contracting Parties shall apply mutates mutandis the provisions of articles 2 to 6 of the Berne Convention in respect of the protection provided for in this Treaty.[36]

Article 4

Computer Programs

Computer programs are protected as literary works within the meaning of article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression.[37]

Article 5

Compilations of data (databases)

Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation.[38]

Article 6

RIGHT OF DISTRIBUTION

1. Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.

2. Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph 1 applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author.[39]

Article 7

RIGHT OF RENTAL

1. Authors of

(i) Computer programs;

(ii) Cinematographic works; and

(iii) Works embodied in phonograms, as determined in the national law of Contracting Parties,

shall enjoy the exclusive right of authorizing commercial rental to the public of the originals or copies of their works.

2. Paragraph (1) shall not apply

(i) In the case of computer programs, where the program itself is not the essential object of the rental; and

(ii) In the case of cinematographic works, unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of reproduction

3. Notwithstanding the provisions of paragraph 1, a Contracting Party that, on 15 April 1994, had and continues to have in force a system of equitable remuneration of authors for the rental of copies of their works embodied in phonograms may maintain that system provided that the commercial rental of works embodied in phonograms in not giving rise to the material impairment of the exclusive right of reproduction of authors.[40,41]

Article 8

RIGHT OF COMMUNICATION TO THE PUBLIC

Without prejudice to the provisions of articles 11(1)(ii), 11bis(1)(*i*) and (ii), 11ter(1)(ii), 14(1)(ii) and 14bis(1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.[42]

Article 9

DURATION OF THE PROTECTION OF PHOTOGRAPHIC WORKS

In respect of photographic works, the Contracting Parties shall not apply the provisions of article 7(4) of the Berne Convention.

Article 10

LIMITATIONS AND EXCEPTIONS

1. Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

2. Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.[43]

Article 11

OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

Article 12

OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:

(i) To remove or alter any electronic rights management information without authority;

(ii) To distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

2. As used in this article, "rights management information" means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work,

and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.[44]

Article 13

APPLICATION IN TIME

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention to all protection provided for in this Treaty.

Article 14

PROVISIONS ON ENFORCEMENT OF RIGHTS

1. Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

2. Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.

Article 15

ASSEMBLY

1. (*a*) The Contracting Parties shall have an Assembly.

(*b*) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.

(*c*) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

2. (*a*) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.

(*b*) The Assembly shall perform the function allocated to it under article 17(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(*c*) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

3. (*a*) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(*b*) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote and vice versa.

4. The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

5. The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 16

International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 17

Eligibility for becoming party to the Treaty

1. Any Member State of WIPO may become party to this Treaty.

2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

3. The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 18

Rights and obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 19

Signature of the Treaty

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

Article 20

Entry into force of the Treaty

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

Article 21

Effective date of becoming party to the Treaty

This Treaty shall bind:

(i) The 30 States referred to in article 20, from the date on which this Treaty has entered into force;

(ii) Each other State, from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;

(iii) The European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to article 20, or, three months after the entry into force of this Treaty if such instrument has deposited before the entry into force of this Treaty;

(iv) Any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 22

No reservations to the Treaty

No reservation to this Treaty shall be admitted.

Article 23

Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received its notification.

Article 24

Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.

2. An official text in any language other than those referred to in paragraph 1 shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

NOTES

[1] Entered into force on 26 July 1999.

[2] Agreement adopted by the Inland Transportation Committee of the fifty-eighth session of Economic for Europe at Geneva 15-19 January 1996. ECE/TRANS/120 and Corr.1.

[3] Entered into force on 3 December 1998.

[4] Conference of the State of the States Parties doc. CCW/CONF.1/16 (Part I).

[5] Not yet in force.

[6] Depositary notification CN.293.1996 Treaties-1 of 30 October 1996.

[7] Not yet in force.

[8] United Nations doc. A/50/1027, annex.

[9] International Legal Materials, vol. 35, No. 6 (1996), p. 1433; see also chap. III.B.8 of this Yearbook. Not yet in force.

[10] International Legal Materials, vol. 36 (1977), p. 7.

[11] World Intellectual Property Organization publication No. 227(E).

[12] Agreed statement concerning article 1(2): It is understood that article 1(2) clarifies the relationship between rights in phonograms under this Treaty and copyright in works embodied in the phonograms. In cases where authorization is needed form both the author of a work embodied in the phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice versa.

It is further understood that nothing in article 1(2) precludes a Contracting Party from providing exclusive rights to a performer or producer of phonograms beyond those required to be provided under this Treaty.

[13] Agreed statement concerning article 2(*b*): It is understood that the definition of phonogram provided in article 2(*b*) does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

[14] Agreed statement concerning articles 2(*e*), 8, 9, 12, and 13: As used in these articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[15] Agreed statement concerning article 3(2): For the application of article 3(2), it is understood that fixation means the finalization of the master tape ("bande-mère").

[16] Agreed statement concerning article 3: It is understood that the reference in articles 5(*a*) and 16(*a*) (iv) of the Rome Convention to "national of another Contracting State" will, when applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is a member of that organization.

[17] Agreed statement concerning articles 7, 11 and 16: The reproduction right, as set out in articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproductive within the meaning of these Articles.

[18] Agreed statement concerning articles 2(*e*), 8, 9, 12, and 13: As used in these Articles, the expressions "copies" and "original and copies" being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[19] Agreed statement concerning articles 2(*e*), 8, 9, 12, and 13: As used in these articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[20] Agreed statement concerning articles 7, 11 and 16: The reproduction rights, as set out in articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

[21] Agreed statement concerning articles 2(*e*), 8, 9, 12, and 13: As used in these Articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[22] Agreed statement concerning articles 2(*e*), 8, 9, 12, and 13: As used in these Articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[23] Agreed statement concerning article 15: It is understood that article 15 does not represent a complete resolution of the level of rights of broadcasting and communication to the public that should be enjoyed by performers and phonogram producers in the digital age. Delegations were unable to achieve consensus on differing proposals for aspects of exclusively to be provided in certain circumstances or for rights to be provided without the possibility of reservations, and have therefore left the issue to future resolution.

[24] Agreed statement concerning article 15: It is understood that article 15 does not prevent the granting of the right conferred by this Article to performers of folklore and producers of phonograms recording folklore where such phonograms have not been published for commercial gain.

[25] Agreed statement concerning articles 7, 11 and 16: The reproduction right, as set out in articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

[26] Agreed statement concerning article 16: The agreed statement concerning Article 10 (on limitations and exceptions) of the WIPO Copyright Treaty is applicable mutates mutandis also to Article 16 (on Limitations and Exceptions) of the WIPO Performances and Phonograms Treaty. [The text of the agreed statement concerning Article 10 of the WIPO Copyright Treaty reads as follows: "It is understood that the provisions of article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

"It is also understood that article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention."]

[27] Agreed statement concerning article 19: The agreed statement concerning article 12 (on obligations concerning rights management information) of the WIPO Copyright Treaty is applicable mutates mutandis also to Article 19 (on obligations concerning rights management information) of the WIPO Performances and Phonograms Treaty. [The text of the agreed statement concerning Article 12 of the WCT reads as follows: "It is understood that the reference to 'infringement of any right covered by this Treaty or the Berne Convention' includes both exclusive rights and rights of remuneration.

"It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty."]

[28] Articles have been given titles to facilitate their identification. There are no titles in the signed text.

[29] Articles 4 and 5 of the Rome Convention are referred to in article 3(2) of the WIPO Performances and Phonograms Treaty by the words "criteria for eligibility for protection provided for in the Rome Convention".

[30] Paragraph 3 of article 5 of the Rome Convention is referred to in article 3(3) of the WPPT.

[31] Article 16(1) (*a*) (iii) and (iv) of the Rome Convention are referred to in article 17 of the same Convention.

[32] Article 17 of the Rome Convention is referred to in article 3(3) of WPPT.

[33] Article 18 of the Rome Convention is referring to article 17 of the same Convention.

[34] World Intellectual Property Organization publication No. 226(E).

[35] Agreed statement concerning article 1(4): The reproduction as set out in article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of article 9 of the Berne Convention.

[36] Agreed statement concerning article 3: It is understood that, in applying article 3 of this Treaty, the expression "country of the Union" in articles 2 to 6 of the Berne Convention will be read as if it were a reference to a Contracting Party to this Treaty, in the application of those Berne articles in respect of protection provided for in this Treaty. It is also understood that eh expression "country outside the Union" in those articles in the Berne Convention will, in the same circumstances, be read as if it were a reference to a country that is not a Contracting Party to this Treaty, and that "this Convention" in articles 2(8), 2bis(2), 3, 4 and 5 of the Berne Convention will be read as if it were a reference to the Berne Convention and this Treaty. Finally, it is understood that a reference in articles 3 to 6 of the Berne Convention to a "national of one of the countries of the Union" will, when these Articles are applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is member of that organization.

[37] Agreed statement concerning article 4: The scope of protection for computer programs under article 4 of this Treaty read with article 2, is consistent with article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement.

[38] Agreed statement concerning Article 5: The scope of protection for compilations of data (databases) under article 5 of this Treaty, read with article 2, in consistent with Article 2 of the Berne Convention and on a par with the relevant provisions of the TRIPS Agreement.

[39] Agreed statement concerning articles 6 and 7: As used in these articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[40] Agreed statement concerning articles 6 and 7: As used in these articles, the expressions "copies" and "original and copies" being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[41] Agreed statement concerning article 7: It is understood that the obligation under article 7(1) does not require a Contracting Party to provide an exclusive right of commercial rental to authors who, under that Contracting Party's law, are not granted rights in respect of phonograms. It is understood that this obligation is consistent with article 14(4) of the TRIPS Agreement.

[42] Agreed statement concerning article 8: It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention. It is further understood that nothing in article 8 precludes a Contracting Party from applying article 11bis(2).

[43] Agreed statement concerning article 10: It is understood that the provisions of article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.

It is also understood that article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.

[44] Agreed statement concerning article 12: It is understood that the reference to "infringement of any right covered by this Treaty or the Berne Convention" includes both exclusive rights and rights of remuneration.

It is further understood that Contracting Parties will not rely on this article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.

CHAPTER V

DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS[1]

A. Decisions of the United Nations Administrative Tribunal[2]

1. JUDGEMENT NO. 759 (26 JULY 1996): SHEHABI V. THE COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST[3]

Complaint against termination of employment while Applicant was in prison without charge or trial–Exceptional circumstances warranted the waiver of time-limits for an appeal Judgement No. 759, Tarjouman Policy regarding detention of a staff member

The Applicant, who had entered the service of UNRWA in October 1977, was serving on a temporary indefinite appointment as a Teacher at the grade 8 level in the Syrian Arab Republic, when he was arrested, while teaching class, on 31 March 1982, and was detained in prison without charges for almost 10 years. His appointment was terminated on 29 September 1982, on the ground of "non-availability".

UNRWA informed the Ministry of Foreign Affairs of the Syrian Arab Republic, on 8 May 1982, that the Applicant had been arrested on the Agency's premises while he was performing his duties as a Teacher, making reference to the 1946 Convention on the Privileges and Immunities of the United Nations, and requested the reason for the detention of its staff member. UNRWA sent a further communication to the Ministry of Foreign Affairs on behalf of the Applicant, on 18 January 1983. No response was received from the Syrian authorities.

In the meantime, on 2 November 1982, UNRWA informed the Applicant that as six months had passed and he had failed to report to work, he was being terminated on the ground of non-availability of service, effective 29 September 1982, pursuant to staff regulations 9.1 and 9.3(b). In a statement dated 21 My 1983, the Applicant authorized his wife to receive all his UNRWA salary and compensation, and on 20 July 1983, UNRWA paid the Applicant's separation benefits to his wife.

On 14 August 1991, UNRWA again inquired as to the reason for the Applicant's detention, and also requested that the Director of UNRWA Affairs visit him, together with two other detained staff members. The Applicant was released from prison on 15 December 1991, and on 25 January 1992, applied to UNRWA for reinstatement. He was reappointed as a Teacher at the grade 8 level. At the same time, the Applicant requested that he be considered as having been employed during his detention, and that he paid his salary and granted the seniority he would have accrued during those years. This was denied, and the Applicant appealed.

The Applicant had not sought an administrative review of the decision to terminate his service for some 10 months after his release and he had not appealed to the Joint Appeals Board until 16 March 1994, 16 months later; and the Respondent had contended that the Applicant's appeal was thus time-barred. The Tribunal noted that under normal circumstances those delays would be regarded as unusually long periods of time in which to fail to comply with the relevant rules; however, the present case cannot be regarded as normal. The Tribunal considered that since the Applicant had been incarcerated without charge or trial for 10 years and that, therefore, a long period of readjustment to the outside world would be required before the released person would begin to come to terms with the ordinary requirements of everyday life, these were indeed exceptional circumstances justifying the waiving of specified time limits pursuant of area staff rule 111.3.

In reviewing the substance of the Applicant's case, the Tribunal recalled its Judgement No. 579, Tarjouman (1992), wherein it was stated that the detention of a staff member was so serious a matter that the Organization had a duty, at the very least, to persist in efforts to obtain pertinent information. It was important that the Organization insisted on respect for its staff's functional immunity under the 1946 Convention on the Privileges and Immunities of the United Nations, and that staff must be able to rely on efforts by the Organization to assure their protection against arbitrary arrest and detention and on assistance to staff members subjected to it. The case emphasized the ongoing need for vigilance and aggressive action to protect and defend staff rights in this area.

In the light of Tarjouman, the Tribunal noted that in the span of 10 years, UNRWA only had sent three communications to the Syrian Government, and in the opinion of the Tribunal those efforts were utterly inadequate. The Agency should have pressed the authorities with inquiries and personal visits in an effort to obtain information as to the Applicant's whereabouts and the reason for his detention.

The Tribunal further noted that in 1984, a more detached policy had been adopted by the Respondent in respect of staff members who were detained, which provided that the staff member shall be placed on special leave with full pay for a year, and if within the period of one year the Agency could obtain adequate information as to the reasons for the staff member's detention the Agency might continue the staff member's pay protection. The policy stated that, unless there is at least some prima facie evidence of wrongdoing on the part of the staff member, such pay protection should continue. In the Applicant's case, the Respondent had acted in accordance with the policy in force, i.e. six-month pay protection.

However, in the view of the Tribunal, the Respondent had failed to act in accordance with the policy with regard to attempting to obtain information as to the reasons for the Applicant's detention without charge, and there was no prima facie evidence of wrongdoing. For the foregoing reasons, the Tribunal ordered the Respondent to pay the Applicant, as compensation, the amount of $7,500, and all other pleas were rejected.

2. Judgement No. 765 (26 July 1996): Anderson Bieler v. the Secretary-General of the United Nations[4]

Non-promotion—Secretary-General's Bulletin ST/SGB/237—Judgement No. 671, Grimblat-Delay in recruitment process–Promotion of staff member approaching retirement

The Applicant entered the service of the United Nations in March 1960, as a Guide-Trainee, and eventually reached the P-4 level on 1 April 1985.
From 18 October 1990 to 17 February 1991, the Applicant was temporarily assigned to the Security Council and Political Committees Division, Department of Political and Security Council Affairs against a P-5 post. The Applicant was paid a special post allowance at the P-5 level, with effect from 18 January 1991 until 31 January 193, when she retired, having been retained in service beyond the retirement age, which she had reached on 31 May 1992.

On 20 May 1991, the Applicant applied for the post of Senior Political Affairs Officer, under the vacancy management system then in force. The post was to become vacant in September 1991, when the incumbent would reach the statutory retirement age, but upon his reaching retirement age, his appointment was extended to 31 October 1991, thus delaying selection of his replacement. The Applicant was short listed for the post, along with two male staff members, one of whom was selected for the post.

The Applicant appealed, contending that the Respondent's failure to select her for the post was not in accordance with the provisions of Secretary-General's Bulletin ST/SGB/237, which provides that:

> "...following policy shall apply in the area of assignment and promotion:
>
> "In departments and offices with less than 35 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 females candidatures."

The Department of Political and Security Council Affairs had not met the percentages required by the Secretary-General's bulletin. The Joint Appeals Board had concluded that had thee Administration acted efficiently and taken action, the vacancy would have been filled by the Applicant, as she was the most deserving candidate, and her selection would have achieved all the objectives set out in ST/SGB/237.

The Respondent had cited Judgement No. 671, Grinblat (1995), as disavowing any automatic right on the part of the Applicant to be promoted as a result of ST/SGB/237. The Tribunal noted that that judgement involved the application of ST/SGB/237 by the Appointment and Promotion Board in compiling the short list for a post prior to departmental consideration of the list to determine who should fill the post. The Tribunal had concluded that it was inappropriate for the APB to exclude equally qualified male applicants from the short list and ST/SGB/237 should have been applied by the Department concerned. The Tribunal also had found in Grinblat that the Board's application of ST/SGB/237 in compiling the short list had not conformed with United Nations

resolutions and Article 101 paragraph 3, of the Charter of the United Nations which provides that "the paramount consideration in the employment of staff...shall be the necessity of securing the highest standards of efficiency, competence and integrity."

However, the Tribunal's finding only affected ST/SGB/237; "to the extent that the bulletin was interpreted as purporting to authorize the promotion of 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." (para. XV, emphasis added)

The Tribunal noted that the above finding did not preclude the application of ST/SGB/237 to mandate the selection of women candidates when they were found to be equally qualified. Indeed, in Grinblat the Tribunal had held that, although it would be impermissible to view Article 8 of the Charter of the United Nations, which provides for equal opportunity in United Nations employment, as overriding Article 101, paragraph 3, at the same time Article 8 "must be regarded as a source of authority for reasonable efforts to improve the status of women." The judgement further noted "when affirmative action measures taken towards ameliorating the effects of the past history, they will, without doubt, be perpetuated for many years. This is incompatible with the objectives of Article 8."

Unlike Grinblat, the present case involved the application of ST/SGB/237 by the department filling the post. The Tribunal reaffirmed that the affirmative action measure established a right to preferential treatment for women whose qualifications "are substantially equal to the qualifications of competing male candidates" "Judgement No. 671, Grinblat XIX) when the other requirements of ST/SGB/237 are met. The Applicant's qualifications were at least equal to those of the other candidates.

The Tribunal, therefore, found that, as the Applicant was the only woman short listed for the post, and as she was equally, if not more, qualified for the post, she had a right to promotion, in the light of ST/SGB/237.

The Applicant had further contended that the delay in selection of a replacement for the vacant post for eight months after the applications for the post had been received denied her the possibility of promotion. The Tribunal noted that the vacancy management rules provided that a promotion should be implemented as of the beginning of the seventh month after the staff member had assumed the full functions of the higher-level post, and, by that time, the Applicant would have reached retirement age. But for the Administration's delay in the recruitment process, resulting in significant part from the extension of the incumbent of the post beyond the retirement age, the Applicant's promotion could have been implemented. The Respondent had argued that eight months was not unreasonable in all the circumstances, yet, as the Tribunal noted, he had not delineated the particular circumstances warranting the delay in the appointment. The Tribunal further noted the comment by the former Director of the Political and Security Council Committees Division that the extension of the incumbent in the post beyond retirement age was not justified by exceptional circumstances and had not served the interests of the Organization.

The Tribunal has held that denying promotion of a staff member because he or she was approaching retirement age violates principles of equity and fairness (Judgement No. 483, Kleckner, (1990); Judgement No. 690, Chileshe

(1995)). Similarly, in the present case, the Tribunal found that a delay in the recruitment process, resulting in the selection of a staff member other than Applicant, was inequitable and unfair, and deprived her of a promotion to which she was entitled. For the foregoing reasons, the Tribunal awarded the Applicant compensation in the amount of $10,000.

3. JUDGEMENT NO. 767 (26 JULY 1996): NAWABI V. THE SECRETARY GENERAL OF THE UNITED NATIONS[5])

Non-renewal of a fixed-term appointment — Issue of expectancy of renewal of fixed term appointment — Active recruitment of Applicant when post and career opportunities had been virtually eliminated – Egregious circumstances require greater damages award — Issue of a promise of a possibility of a career with the Organization

The Applicant had given up his position with the United States Army Corps of Engineers in Frankfurt, Germany, in order to take up his United Nations posting with UNDP in Damascus. The Applicant had accepted the Respondent's offer of one-year fixed-term appointment, as a Civil Engineer at the P-3 level, on 4 February 1992.

On 28 February 1992, the question arose of the abolition of the Applicant's post, for budgetary reasons. Despite this, at the Organization's request, the termination date of the Applicant's service with the United States Army Corps of Engineers was advanced to 31 March 1992, and it was only on his arrival in Damascus, on 16 April 1992, that the Applicant was told that his post had been abolished, by a decision of 17 March 1992.

The Applicant was appointed to another post, which also was abolished, on 15 September 1992. He was then appointed to another post, in the Procurement Section, which the Applicant had described as being that of a trainee. The Applicant separated from service, on 15 October 1993, following a six-month extension of his appointment. The Applicant appealed.

The Tribunal noted that, while the Respondent had correctly argued that, pursuant to United Nations staff rule 104.12(6), fixed-term appointments did not carry any expectancy of renewal or conversion to any other type of appointment, the Applicant had left a career position to join the Organization, having being told on more than one occasion that the prospect existed of continuation of his service, and that subject to satisfactory performance he might have the opportunity of a career with the United Nations.

The Tribunal further noted that after the post had been abolished, the Respondent had persisted in active recruitment of the Applicant, leading him to believe that there were career opportunities, as well as a post, in his field of expertise, when the Respondent knew, at the time of recruitment, that career opportunities for the Applicant had been virtually eliminated.

In the opinion of the Tribunal, it was impossible to avoid a finding of falsehood and great injustice, and because of the egregious circumstances in the present case, including the entire manner in which the Applicant had been treated from the outset, as well as the extent of the loss suffered by the Applicant as a consequence, he should be awarded greater damages.

The non-renewal of the Applicant's appointment was not a violation of his right of expectancy of such renewal. Rather, in the view of the Tribunal, it was a denial to the Applicant, during the short tenure with the Organization, of any opportunity to demonstrate his abilities in a post relevant to the skills and experience for which he had been recruited on the promise that there was a possibility of a career with the Organization. That promise, which had induced the Applicant into service, had been entirely without foundation, and furthermore there had been on explanation offered as to why it had been made, or of the motivation of those who had made it.

For the foregoing reasons, the Tribunal rescinded the decision of the Respondent and ordered that the Applicant be reinstated to a post comparable to that for which he had been recruited, with full payment of salary and emoluments from the date of his separation, less his earnings from other employment in the interim. Should the Secretary-General decide, in the interest of the United Nations, the Applicant should be compensated without further action taken, the Tribunal on the recommendation of the Joint Appeals Board, fixed the amount at two years of his next base salary at the rate in effect on the date of his separation from service, in addition to the sum already paid to the Applicant.

4. JUDGEMENT NO. 770 (2 AUGUST 1996): SIDIBEH V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[6])

Complaint against separation from service on the ground of abandonment of post — Scope of the appeal submitted directly to the Tribunal — Abandonment of post or disciplinary matter — Question of discriminatory treatment.

The Applicant was a staff member of UNHCR from 1 April 1980 to 6 October 1993, when he was separated from service for abandonment of post. During the course of the Applicant's career, he had served in several hardship duty stations, against which he had protested, suggesting that he was being subjected to discrimination. Finally, for medical reasons, he refused to accept an assignment, first, to the post of Senior Repatriation Officer and, then, to the post of Deputy Regional Representative in Kinshasa, the refusal of which led to his termination.

On 4 May 1992, prior to the Applicant's termination, he filed an appeal with the Joint Appeals Board, alleging discrimination in the pattern of his assignments and following his separation, the Applicant amended his appeal to include the issue of his separation for abandonment of post. In the light of the long delay in consideration of his JAB appeal, the Applicant had requested that the Respondent allow him to submit the appeal directly to the Tribunal, which a request was eventually granted.

In that connection, the Respondent had argued that the appeal should be limited to the issue of abandonment of post. However, the Tribunal found that because the Respondent had given his consent, without limitation, to the Applicant submitting his appeal directly to the Tribunal, no limitation could subsequently be imposed by the Respondent.

Regarding the issue of the Applicant's separation on the ground of abandonment of post, the Applicant's argument that he had not abandoned his post because he had never assumed the post was accepted by the Tribunal. In the

opinion of the Tribunal, the Respondent should have submitted the Applicant's refusal to assume the functions of the post he had been assigned to disciplinary proceedings. Such proceedings would have given the Applicant due process protection and an opportunity to defend his conduct by raising the medical issues in his case.

Regarding the Applicant's complaint of discriminatory treatment, the Tribunal noted that, while he did appear to have been posted to many hardship duty stations, he had not adduced evidence of discrimination. The Tribunal found that, pursuant to staff regulation 1.2, it was within the discretion of the Respondent to assign the Applicant to Kinshasa. Moreover, the Applicant had provided evidence of his medical condition, but he had not produced evidence that his submissions to the United Nations Medical Office, which had concluded that the Applicant could undertake service in Zaire, had been reviewed in a manner which lacked impartiality or was tainted by extraneous factors. Furthermore, it was not for the Tribunal to substitute its judgement for that of the Medical Service in this respect in the absence of a showing of improper or procedural irregularity.

The Tribunal concluded that, although the Applicant had been given ample notice of his impending separation, having been warned in writing in four occasions that his refusal to report to duty would result in his separation, proceedings to separate the Applicant from service in those circumstances should have been conducted under staff regulation 10.2 (Disciplinary measures). In this manner, a more appropriate review could then have been conducted of the medical issues raised by the Applicant in explanation of his refusal.

For the foregoing reasons, the Tribunal concluded that the Applicant should not have been separated from service on the ground of abandonment of post. Accordingly, the Tribunal rescinded the decision to do so and ordered that the Applicant be reinstated to a post comparable to that to which he had been assigned with full payment of salary an emoluments from the date of his separation, less his earnings from other employment in the interim. Should the Secretary-General, within 30 days of the notification of that judgement decide, in the interest of the United Nations, that the Applicant should be compensated without further action being taken in his case, the Tribunal fixed the compensation to be paid to the Applicant as one year of his net base salary.

Finally, regarding the Applicant's claim for compensation for a job-related illness, the Tribunal stated that that issue should be submitted to the appropriate instance under appendix D to the United Nations Staff Regulations and Rules.

5. Judgement No. 791 (21 November 1996): Karmoul v. the Secretary-General of the United Nations[7]

Non-renewal of fixed-term appointment — Non-renewal must be in the interest of the Organization — Judgement No. 142, Bhattacharyya

The Applicant, a Jordanian national, entered the service of the United Nations Economic and Social Commission for Western Asia on 19 October 1989, at the D-1 level. He served on a series of fixed-term contracts until 12 September 1993, when he was informed that the Executive Secretary had decided not to renew his appointment after 18 October 1993, the final date of expiration of

his final appointment. During a meeting, which was reflected in a note dated 17 October 1993, the Executive Secretary referred to a study prepared on Jordan which was regarded as technically unsatisfactory by the Government of Jordan, and he also reiterated the allegation related to the Applicant's use of the Division secretaries for personal work, related to his private water company. The Applicant disputed the contents of the note, and lodged an appeal.

In consideration of the case, the Tribunal recalled staff rule 104.12(b), which states that fixed-term contracts carry no expectancy of renewal, and pursuant to the Tribunal's jurisprudence, good performance does not create a legitimate expectancy of renewal. And, although the Administration has the discretion not to renew a fixed-term contract, such discretion must be exercised exclusively in the interest of the Organization. Furthermore, following Judgement No. 142, *Bhattacharyya* (1971), the Tribunal in making such a determination looks at all the circumstances surrounding the non-renewal.

In that connection, the Tribunal examined the first reason given for the Applicant's non-renewal, which concerned the intended recycling of human resources of ESCWA, which was allegedly decided upon the Executive Secretary in consultation with the Secretary-General. In that regard, the Tribunal noted that no evidence had been submitted either to show that a plan of comprehensive recycling had been approved or that it had followed consultations with the Secretary-General. On the contrary, the Tribunal reviewed a report, dated 16 November 1993, on the Programme and Administrative Practices of the Regional Commission for Africa and Western Asia submitted by a team from the Office of Inspections, which remarked on ESCWA's initiation of a process of staff replacements, but with no correspondence to any defined project of quality improvement or any other discernible pattern.

Two further reasons were conveyed to the Applicant on 17 October. The Applicant denied having been involved in the study on Jordan which was regarded as unsatisfactory by the Jordanian Government, and even contested its existence. No evidence to the contrary was submitted by the Respondent. Concerning the alleged use by the Applicant of using the office's secretaries for work related to the Applicant's private business, part of the document which the Respondent retrieved from the Applicant's former division's PC directory which was purported to be related to the Applicant's private business was actually a paper written by his daughter for the University of Jordan.

The Tribunal concluded that those circumstances pointed to the existence of animosity against the Applicant, and that such animosity constituted an extraneous factor sufficient to suggest an inference that the decision not to renew the Applicant's fixed-term contract had been based on personal motives and was not in the best interests of the Organizations.

For the foregoing reasons, the Tribunal ordered the Respondent to pay the Applicant $5,000.

6. JUDGEMENT NO. 795 (21 NOVEMBER 1996): EL-SHARKAWI V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[8])

Non-renewal of fixed-term appointment — Question of legitimate expectation of continued employed — Question of non-renewal decision motivated by prejudice or abuse of power Applicant's fixed-term contract had been based on personal motives and was not in the best interests of the Organization.

The Applicant served on a series successive fixed-term appointments as the P-2 level for an uninterrupted period of 18 months, until 29 January 1993, the Applicant was informed that his appointment would not be extended.

The Tribunal noted that it had been its consistent jurisprudence to hold that a series of successive fixed-term appointments was not sufficient to create a legitimate expectation of continued employment (Judgements No. 305, Jabbour (1983) and No. 427, Raj (1988)); that employment with the Organization ceased on the expiration date of a fixed-term appointment and that a legal expectancy of renewal would not be created by efficient or even by outstanding performances (Judgements No. 173, Papaleontiou (1973); No. 440, Shankar (1989); No. 496, B. (1990) and No. 506, Bhandari (1991)). The Tribunal also had held that any factor might have misled the staff member to believe that his or her contract of employment might be extended or converted into more permanent employment must be weighed to determine whether it was the Respondent who was responsible for causing the misapprehension (cf. Judgements No. 142, Bhattacharyya (1971) and No. 242, Klee (1979).

In the case before it, the Tribunal found several actions by the Respondent that might have misled the Applicant to believe that his contract would be renewed. Firstly, the Applicant had been hired to work on an undertaking which was considered a long-term project of the United Nations. Secondly, the Applicant had received repeated assurances from his supervisor that his presence was essential to success of the project. Thirdly, there had been repeated interventions by the substantive department, insisting on the Applicant's continued employment in order to finalize the project on which he was working. Those factors together might have created the reasonable impression that the Applicant's employment would be continued. Therefore, based on those circumstances, the Tribunal agreed with the Joint Appeals Board's recommendation that the Applicant should be compensated.

The Applicant also claimed that the non-renewal of his appointment constituted abuse of power, and was motivated by prejudice or other extraneous factors. The Tribunal had consistently held that an Applicant, when alleging prejudice or abuse of power, had the burden of proving those grounds by compelling evidence (Judgements No. 312, Roberts (1983) and No. 470, Kumar (1989)). Therefore, it was clearly incumbent upon the Applicant to prove those allegations. Having reviewed the material before it, the Tribunal concluded that the Applicant had failed so to prove.

For the foregoing reasons, the Tribunal ordered the Respondent to pay the Applicant compensation equal to six months' net base salary at the rate in effect at the time of his separation from service, in addition to the compensation previously awarded by the Secretary-General. The Tribunal also ordered that the Applicant should be considered for vacancies for his qualifications and experience.

7. JUDGEMENT NO. 803 (21 NOVEMBER 1996): ASAMOAH V. THE SECRETARY-GENERAL OF THE UNITED NATIONS[9])

Complaint against correcting status from non-local to local—Determination of local status—Question of equity

The Applicant entered the service of the United Nations Office at Geneva on 4 August 1980, as a Finance Clerk, on a fixed-term appointment at the G-3 level. Neither his initial Letter of Appointment nor his initial Personnel Action Form had made any mention of his status as a local or a non-local recruit. His Personnel Action Form had stated that his country of nationality was Ghana and that he was recruited from Annecy, France. During his service with the Office, the Applicant received successive promotions to the G-4 and G-5 levels, with effect from 1 April 1982 and 1 January 1993, respectively.

On 7 December 1983, the Applicant was informed by the Chief of the Personnel Administrative Section that a mistake had been made by the Recruitment Section at the time of the Applicant's appointment and that his status would be corrected from non-local to local recruit. Although the Applicant had requested an administrative review of that decision, and upon review the decision to change his status was upheld on 25 May 1984, no action was taken until 14 January 1994, almost 10 years later, when the Applicant was again informed that the correction would be made, for the reasons set out in the memorandum dated 7 December 1983. The Applicant appealed, contending that the criterion for determination of entitlement to non-local recruitment status was the place of the Applicant's residence at the time of recruitment, rather than the nature of the post, and also claiming that the granting of international benefits to the Applicants at the time of recruitment was in accordance with the relevant United Nations Staff Regulations and Rules.

The Applicant had contended that, as appendix B of the United Nations Staff Rules defined a locally recruited staff member as one at the time of the appointment was either a Swiss national or resident within a 25 kilometre radius of the Palais des Nations, and because he was not a Swiss national and had lived outside the 25 kilometre radius when recruited, he had been properly appointed with a non-local status. The Applicant also referred to Judgement No. 508, Rosetti (1991), which, in referring to conditions for international recruitment of a General Service staff member, stated that the relevant condition was that they should be recruited from outside the duty station, and that whether a staff member was entitled to the allowances or benefits of an internationally recruit was determined by the staff member's place of recruitment and not by the post occupied.

In contrast, the Respondent had argued that it would have been unreasonable, simply because the Staff Rules provided that a locally recruited official was one resided within 25 kilometres of the Palais des Nations, to interpret the Rules as requiring that the Respondent should pay international benefits to a staff member not so residing. Furthermore, the Respondent argued, referring to

annex 1 paragraph 6, of the United Nations Staff Regulations, which provided that the salary scales of General Service staff were fixed by reference to best prevailing local rates, that the provisions of the United Nations Staff Regulations governing General Service staff focused on the type of skills needed for a post rather than on the address of the successful Applicant at the time of his recruitment. The Respondent, pointing out that Finance Clerks were among the category of staff who might be recruited on non-local basis, had explained that the Applicant had initially been given non-local status owing to a simple administrative error in an internal document known as a check list.

Moreover, the Respondent stated that the practice of the United Nations Office at Geneva when filing General Service positions, such as the Applicant's, was not to bar candidates simply because they resided more than 25 kilometres from the Palais des Nations. The Respondent also pointed out that the employment contract of any General Service candidate not recruited locally would explicitly describe the new employee's recruitment status, since non-local status was an exception to the General Service category's normal recruitment procedures. The Respondent referred to the Joint Appeals Board's finding that the observance of any reference to the Applicant's local/non-local status in the offer of employment made to the Applicant should be interpreted to include him in the good category of General Service staff, who were normally recruited on a local basis in accordance with appendix B of the United Nations Staff Rules.

The Tribunal, while noting that the words of appendix B of the United Nations Staff Rules were perfectly clear, and taken on their own supported the Applicant's argument, believed, however, that the United Nations Staff Regulations and the recruitment practices referred to above also must be taken into consideration. In addition, it was clear that the Applicant's current situation resulted from the error made in the relevant employment documentation at the time of his recruitment, and that the Organization had never intended that he be recruited internationally. Moreover, the Tribunal distinguished Rosetti from the present case. In Rosetti, the Applicant had been properly recruited to a position reserved for international recruitment, since that position had required special skills, and had later, been transferred to a post that was not so reserved. On these facts, the Tribunal indicated that Ms. Rosetti could not be deprived of her properly acquired status as an international recruit, and in the present case, it was clear that the Applicant's non-local status had been acquired in error.

However, the Tribunal noted that owing to an error on the part of the Administration, the Applicant had been treated as an international recruit since 1980. The Administration had discovered its error as early as 1983, and yet it had allowed the situation to continue until 1994. The Tribunal, noting that the Respondent had provided no explanation for the almost 10 year delay, believed that it would have been unjust and inequitable if the benefits accruing to the Applicant as a result of the error had now been terminated. Therefore, to terminate the Applicant's benefits at that point would have resulted in a severe and unacceptable penalty for the Applicant, since the benefits at issue had arisen from an error that through negligence had not been addressed by the Administration and, further, was not the Applicant's making.

In view of the foregoing, the Tribunal ordered that the Applicant should continue to be treated as heaving international status with respect to the benefits accruing therefrom.

B. Decisions of the Administration Tribunal of the International Labour Organization[10]

1. JUDGEMENT NO. 1477 (1 FEBRUARY 1996): IN RE NACER-CHERIF V. INTERNATIONAL TRAINING CENTRE FOR THE INTERNATIONAL LABOUR ORGANIZATION[11]

Non-promotion to P-5 — Question of breach of due process—Issue of special safeguards for staff—Redress for flawed selection process.

The complainant joined the International Labour Organization's office in Algeria in 1970, and in 1975 he was transferred to its International Training Centre at Turin. In 1992, serving as chief of the recently created Finance and Budget Service. After two attempts that eventually were abandoned, the competition was held at last in March 1994. It drew 134 outside candidates and 3 internal ones, including the complaint. On the strength of a report by an ad hoc panel, the Selection Committee concluded that three of the outside candidates that the panel had picked were the best, one of whom was appointed to the post. The complaint filed an appeal, complaining, inter alia, of breach of due process.

The Tribunal noted that, pursuant to article 1.2 of the International Labour Organization Staff Regulations and annex H to which 1.2 refers, the Selection Committee provided for in article 10.4 must examine the candidates by a process that is spelt out in great detail. In the present case, the Committee had set up an ad hoc body to make a preliminary assessment of the candidates. The ad hoc body, the "selection" panel, which was distinct from the Selection Committee, had examined the records of the 134 external candidates and reduced the number to 29 and, finally to 3. After the panel interviewed them, together with the 3 internal candidates – the interview with the complainant lasted but 12 minutes – who were not covered by the preliminary assessment, it ranked the three external candidates as "the best". The Selection Committee unanimously accepted the conclusion of the panel, without having seen any of the candidates or looked at the application forms and personal records of the internal candidates.

In the view of the Tribunal, though it was not unthinkable for a selection committee to set up a panel of people whom it believed to be better fitted to assess the technical qualifications of candidates, especially external ones, it could not altogether delegate its authority under the Staff Regulations. It must exercise its own authority and not delegate unless the rules say it may. This was even more important in view pf the fact in the present case, the membership of the body that purports to delegate affords the staff special safeguards. Since the panel's members come mostly from the management side it was not an offshoot of the Selection Committee, even though the Director had consulted the Committee about its membership and two of its six members were also members of the Committee.

In addressing the issue of redress, the Tribunal recalled in its Judgement No. 1359 (in re Cassignau No. 4), an organization must be careful to abide by the rules on selection and appointment, and when the process proves flawed the Tribunal will quash any decision it engendered and order resumption with due need to the rules, albeit on the understanding that the organization must shield

the successful candidate from any injury that otherwise must flow from the quashing of an appointment accepted in good faith. The defendant had suggested an award of damages, instead of rescission, but the Tribunal had held such award to be inadvisable in the circumstance.

The Tribunal, therefore, ordered that the decision by the International Training Centre rejecting the complainant and appointment the external candidate should be set aside, and the case sent back to the Centre. The Centre also was ordered to pay the complainant US$ 2,000 in costs.

2. Judgement No. 1525 (11 July 1996): in re Bardi Cevallos v. United Nations Educational, Scientific and Cultural Organization[12]

Non-renewal of fixed-term appointment-Decision must be made on recommendation of advisory body pursuant to Staff Rules — Issue of redress for breach of due process

The complainant had joined UNESCO in January 1981 as Deputy Chief of the Buildings Division in the Bureau of General Services, at the P-4 level. In January 1986, as part of an exercise of staff retrenchment, his post was put "in reserve", and on 1 May 1986 the complainant was transferred to a temporary post financed from the Headquarters Utilization Fund, and, on 1 March 1988, to a post financed from the same Fund and created for the purpose of redeploying him. In April 1990, the complainant appealed.

The complainant's first plea was that the abolition of the post which he had held in December 1990 was unlawful. However, as that decision had not been challenged at the time, the Tribunal noted that the decision had become final and was not receivable; however, the facts forming the background to the decision to abolish his post still could be relied upon for his other pleas.

The complainant had contented that the Organization's decision not to renew his appointment was a misuse of authority and a grave breach of due process. The Tribunal concluded that since the latter plea had succeeded there was no need to take up the former.

The Tribunal, citing the relevant UNEESCO staff rules and rules of procedure of Personnel Advisory Boards, noted that the Advisory Board had not refused to make a recommendation on the non-renewal of the complainant's appointment, but had suspended proceedings until it could obtain further information from the Administration rather than report without it. The Organization's contention, therefore, that the Director-General was free to take a decision in the absence of a recommendation because the advisory body have failed to make one was incorrect. In the view of the Tribunal, citing its judgements Nos. 232 (in re Diaz), No. 352 (in re Peeters No. 2) and No. 1298 (in re Ahmad No. 2), consulting such a board was no idle formality; it was a means of working out a fair solution. In the present case, it offered the hope of redeploying someone with a long record of service.

The Tribunal concluded that because of the breach of due process the impugned decision could not stand, and that therefore the complainant was entitled to payment of salary and allowances as from the purported date of termination. Furthermore, in deciding whether or not to renew his contract UNESCO must comply with any procedural and substantive rules that were material. The

moral injury to the complainant was sufficiently redressed in the award of full pay from the date of departure without having had to provide any services in return. The complainant also was awarded costs.

3. JUDGEMENT NO. 1547 (11 JULY 1996): IN RE BAILLET, CERVANTES AND COOK (NO. 3) V. EUROPEAN PATENT ORGANISATION[13]

Non-deliverance of invitations to a staff union meeting — Question of receivability — Issue of partiality of member of Appeals Committee — Question of a legally binding practice — Issue of freedom of association — Claim of award of damages

On 15 October 1997, Mr. Cervantes, as Chairman of the Staff Union of the European Patent Organization (EPO), sent out invitations to all members to attend a general meeting on 20 October 1992 at 11 a.m. in a room in EPO premises at The Hague. The messenger service delivered the invitations in the main building but not elsewhere. Mr. Baillet and Mr. Cook did not receive an invitation. By letter of 19 October 1992, the head of the Internal Services, who was in charge of the distribution of mail, informed Mr. Cervantes that the office would not be delivering the invitations. The complainants appealed.

EPO had objected that the complaints had disclosed no cause of action and were, therefore irreceivable. The Organization observed that Mr. Cervantes, who purported to be acting for the union, could not claim damages on its behalf; he could act only in his own name; and his interest in obtaining a promise of delivery of union mail was academic.

In bringing the appeal, Mr. Cervantes complained that the Organization had violated his freedom of speech and breached his freedom of association. Therefore, in the view of the Tribunal, he had brought his complaint in his own name, and he had a direct and rightful interest in the observance of freedom of association that required under article 30 of the Service Regulations.

Regarding EPO's contention that there was no cause of action, the Tribunal considered that there was precedent that an organization had some latitude in affording facilities to a staff union and that its decision were not subject to judicial review. However, that was not the case when it was charged with breach of freedom of association, and the Tribunal would interfere if the effect of the impugned decision was to hamper the freedom of speech that any union must enjoy. Refusal to deliver invitations to a union meeting was unquestionably a breach of the privacy of mail and of the freedom of speech that was part and parcel of freedom of association. EPO's pleas that the union had no right to delivery and that no injury had been caused had to do with merits rather than receivability. The conclusion was that because the complainants had sought a ruling on the lawfulness of refusal to deliver union mail and because such refusal was actionable, the objection to receivability must fail.

Another preliminary issue raised in the case was the complainants' objections to one member of the Appeals Committee. Citing article 11 of the Service Regulations, which provided that the impartiality of any member might be challenged, they contended that one of the members who sat on the Appeals Committee was in charge of the distribution unit; the President's decision was one of direct concern to that unit; and while the case was pending that member was requested to

draft guidelines on the use of the messenger service. The Tribunal rejected the plea, stating that it was plain from the text of the guidelines that the member had drawn up were general in purport and were not particular to the case of union mail. Furthermore, the Committee members, including the staff representatives, had been of one mind in rejecting the charges of partiality against the member.

As to the merits of the case, the Tribunal, while noting that although EPO had not formal agreement with the union about the distribution of the union meeting invitations, it had admitted to the Appeals Committee that its consistent practice since 1992 had been to distribute any unsealed, unofficial internal mail, whether private or not, save any text containing personal attack on someone. And, as the Tribunal had stated in its Judgement No. 421 (in re Haghgou), a usage would be binding if staff had come to rely on it, which they had in the present case.

While the Organization had not denied the practice, it had argued that the union's invitations contravened the rule that a general meeting must be held outside core working hours. However, the Tribunal considered that EPO had not treated the holding of the meeting, as scheduled during core working hours, as an offence serious enough to constitute an abuse, e.g., had authorized the meeting at the time announced and had not imposed any penalty on those who had attended. By thwarting the delivery of the union notices to staff outside the main building, EPO had denied some, and not others, the freedom of association they were guaranteed by article 30, and, in the opinion of the Tribunal, had thereby discriminated against them.

The Tribunal concluded that the claim by Mr. Cervantes to an award of damages to the union was irreceivable because his complaint was in his own name. And though the individual claims by the three complainants were formally sound, the amounts they claimed could not be awarded: the meeting had taken place and there was no evidence of any particular injury. Each was awarded 500 Deutsche marks in damages for moral injury, and costs of 500 marks each.

4. Judgement No. 1549 (11 July 1996): In re Lopez-Cotarelo v. International Atomic Energy Agency[14]

Non-appointment to post — Question of receivability — Limited review of discretionary decision — Issue of accepting application after the established deadline

The complainant had joined the staff of IAEA as a nuclear power plant engineer at grade P-4, on 19 June 1988, and was promoted to P-5 as head of the Middle East and Europe Section of the Division of Technical Cooperation Programmes (TCPM), on 15 January 1990. His appointment was extended to November 1993, when he reached the age of retirement.

On 16 October 1990, IAEA issued a notice of vacancy for the post of director of TCPM, with a closing date for applications of 15 February 1991, and the complainant applied on 7 December 1990. The appointment of the incumbent was to expire on 1 June 1991, but for exceptional reasons, the Agency extended it to 31 December 1992. On 6 September 1991, the Director of Personnel informed all the candidates that the process of selection would not be over before February 1992 and asked whether they were still interested. The complainant stated that he was. Then, on 8 May 1992, another internal candidate, Mr. Barretto, the then Director

of the Division of Technical Cooperation Implementation, appears to have applied for the post, and was assigned to the vacant post effective 1 January 1993. The complainant appeals Mr. Barretto's appointment to the post.

IAEA had objected to the receivablity of the complaint on the ground that the complainant had no cause of action, i.e., he had not shown that he was fit for the advertised post, and even if he were, he had to retire by 30 November 1995 anyway. However, as the Tribunal was held in the past, an official of an international organization who applies for a vacancy is entitled to have his application considered and assessed according to the set procedure once the organization admits it under the terms of the vacancy notice. It may not deny that an Applicant has a cause of action after it has appointed someone else, especially if the Applicant is challenging the appointment on the ground of breach of his rights in failure to apply the proper procedure (Judgements No. 1316 (in re van der Peet No. 17) and No. 1359 (in re Cassagnau No. 4). Nor will the Tribunal uphold the plea that because the complainant was not qualified for the post his complaint was irreceivable, as that touches upon the merits.

The Agency's other objection to receivability was that the complainant had already retired and thus was not eligible for appointment. He explained that it was because he had retired on 30 November 1993 that he was claiming only moral damages. The Agency pointed out that he would in any event have had to retire at the age of 62, by 30 November 1995, and that he might nevertheless have had the exceptional benefit of extension past that age. Whether he still had any interest in the quashing of someone else's appointment was moot; but he still had an interest in exposing a breach of due process which might warrant an award of damage (see Judgement No. 729 (in re Ilomechina)).

Turning to the merits of the case, the Tribunal recalled that its review of the discretionary decision involved in the process of the selection and appointment of a candidate to a post was a limited one. It might aside such a decision it showed a fatal flaw, and a breach of a rule of form or of procedure would amount to such a flaw. As the Tribunal explained, it would be especially wary in such cases: it could not replace the Organization's rating of the candidates with its own, but any Applicant must be considered in good faith and in line with the basic rules of fair competition.

In the present case, the complainant had argued that the successful candidate for the post had applied after the deadline. The Agency had argued that the practice of the Personnel Department was to continue accepting applications until the whole process of selection was over. However, in the view of the Tribunal, such practice could not make good the lack of a rule or explanation in the announcement of the competition. An undeclared practiced failed to provide the openness that competition required. And when the notice demanded timely application, the practice offended against the rule, affirmed in the case law, that after the process of selection had begun the terms of competition might not be changed (Judgement No. 1158 (in re Vianney)). The purpose of competition was to let everyone who wanted the post compete for it equally and precedent demanded scrupulous compliance with the rules announced beforehand: patere legem quam ipse fecisti. See Judgements No. No. 107 (in re Passacantando), No. 729 (in re Ilomechina), No. 1071 (in re Castillo), No. 1077 (in re Barahona), No. 1158 (in re Vianney), No. 1223 (in re Kirstetter No. 2) and No. 1359 (in re Cassaignau No. 4).

As the Tribunal pointed out, if the Organization considered a late application it gave the impression of preferential treatment. Someone who had applied in time might see therein a bending of the rules and might feel that the late Applicant had had inside information about the earlier Applicants and might therefore have acted accordingly, perhaps even at the prompting of the Administration. And to those who might have wanted to apply after the deadline the acceptance of a late application would appear as favouritism: for want of an announcement they might not have realized that application would appear as favouritism: for want of an announcement they might not have realized that application was still allowable and might succeed. Moreover, even though the Organization might have believed that it had acted in its own best interests in accepting the late application, it was not entitled to achieve that purpose by a process of selection that cancelled one stage of the procedure it had already announced. The only proper way of doing so would have been to withdraw the notice altogether and open a new competition on terms that better matched actual requirements.

The Tribunal, therefore, concluded that there was breach of the material provisions.

Regarding the issue of redress, the Tribunal noted that the complainant implicitly acknowledged that, having retired on 30 November 1993, he himself did not stand to gain form resumption of the competition. No other complainant had challenged Mr. Barretto's appointment or questioned his qualifications. As in similar cases (Judgements No. 729, No. 1071 and No. 1077), the Tribunal found it inadvisable to set aside the appointment. Instead it awarded the complainant damages under article VIII of its statute. All he had claimed was moral damages, and the amount was set ex aequo et bono at US $3,000. Having succeeded in the main, he was entitled to 10,000 French francs in costs.

5. Judgement No. 1553 (11 July 1996): in re Moreno de Gomez v. United Nations Educational, Scientific and Cultural Organization[15]

Abolition of post — Limited power of review in such matters — Question of bias — Issue of reassignment after abolition of post — Question of award for material and moral injury

After serving at UNESCO under short-term contracts from 1976 to 1981, the complainant was granted a fixed-term appointment as from 1 November 1981 on a post, No. ED-598, of Spanish editor in the Publications Unit of the Education Sector, at the grade of P.3. Her post became that of Senior Editor in Spanish and was upgraded to P-4, and she promoted accordingly as from 1 July 1987. Her fixed-term appointment was extended several times. The last extension was to expire at 30 June 1993.

On 30 March 1992, the head of the Publications Unit told her orally that her post was to be abolished, and she appealed.

In its report dated 16 June 1994 the Appeals Board observed that of the 12 posts that were being abolished in the Education Sector 6 were vacant at the time and were encumbered. Of the six incumbents, three were due to retire. One of the remaining three had agreed to a termination and another was being redeployed. The complainant was the only one to have to leave the Organization.

The Board held that in filling post ED-634 account had not been taken the complainant's of academic qualifications, her experience in education, her very good record of performance and the priority she should have received as a result of the abolition of her post. The Board believed that, with her consistently good record for over 10 years, she should have proved suitable for redevelopment. If recommended reappointing her as from the date of termination, on a temporary post if necessary, until a suitable established one was found.

However, a 10 November 1994, the Director of the Office of the Director-General informed the complainant that despite many inquiries and consultations the Bureau had been unable to find a post for her, but that the Director-General was willing to treat the termination of her appointment as an agreed separation under regulations 9.1.2 and rule 109.7(*e*) and, in accordance with that rule, to raise her indemnity by half.

The complainant impugned the Director-General's decision of 25 July 1994 as well as the final decision conveyed in the Director's letter of 10 November 1994.

The complainant argued that the abolition of her post, ED-598, had been subterfuge calculated to get rid of her for want of any legitimate grievance. In her submission the decision was characterized as irrational in that insufficient consideration had been given to the importance of publications in Spanish. Since the post was "intersectoral" the workload did not depend merely on the needs of the Education Sector. Yet that sector had recommended doing away with the only post of Spanish editor in the entire secretariat while creating two posts of English editor. She contended that the reasons given for the restructuring – the need to reduce costs and the "decentralization" of editorial services – were unsound. She requested the Tribunal to declare the abolition of her post an abuse of authority.

Many judgements for example No. 1131 (in re Louis) have declared that the Tribunal will not review an organization's policy but only an individual decision taken to give effect thereto and the actual application of substantive rules. Its power of review is limited. It may not supplant an organization's view with its own on such matters as policies of restructuring or redeployment of staff intended to make savings or improve efficiency. It will interfere only when a decision has been taken without authority or in breach of a formal or procedural rule, or has been based on a mistake of fact or of law, or neglected some essential fact, or constituted an abuse of authority, or drawn a mistaken conclusions from the factual evidence.

The Tribunal, citing a memorandum dated 31 July 1992 addressed to senior officers, both at headquarters and in the field, from the Director-General containing information on the restructuring of the Education Sector and on the consequent recommendation to abolish post ED-598 and reassign the complainant, was satisfied that the restructuring and the abolition of the complainant's post had not been not aimed at the complainant herself, had rather been but were

based on objective goals that the Organization was seeking to attain, and the Tribunal would not review the reasons of policy underlying the decision to restructure the sector.

The complainant alleged that the bias which the Administration had shown towards her had originated in 1984, when she had cooperated in an inquiry carried out by the Inspectorate General. One finding of the inquiry, according to the complainant, "nearly created difficulties" for the head of the division in which she was working. That official was later promoted to high office in the Organization and she alleged that countless disguised sanctions were imposed on her after the inquiry.

In the Tribunal's view, however, as there was no direct evidence for the above, the incidents were deemed to be too remote and the evidence she offered too tenuous for the Tribunal to be satisfied that her charge of bias against the Administration was sound.

The complainant also contended that, pursuant to regulation 4.4, she should have been given priority for reassignment to a vacant post after her post was abolished. The Tribunal, recalling Judgement No. 133 (in re Hermann), was satisfied on the evidence that despite the unanimous recommendations by the senior personnel advisory boards and by the Appeals Board, the Organization had failed to give the complainant priority for vacant posts. It had put the wrong question to the units and to its Bureau of Personnel. The right question was not whether there was a post the duties of which she was capable of fulfilling competently. Even after the Director-General had written her the letter of 25 July 1994 no instruction had been issued that she should be given priority for any vacant posts. The decision to terminate her services thus rested on a misinterpretation of regulation 4.4 and therefore on a mistake of law. The Tribunal determined that the decision must therefore be set aside, there being no need to entertain the complainant's other pleas.

The termination had had disastrous results for the complainant and her family. Because of loss of income she had had to put her flat in Paris for sale by public auction and it had fetched a fraction of its market value. She was unable to meet her obligations to the Savings and Loans Service of UNESCO, she had found no other employment and her right of residence in France had been put in doubt. She had accordingly claimed damages for both material and moral injury.

The Tribunal was of the view that the Organization must adopt one of two options: One was to reinstate her and pay her full entitlements as from 1 February 1993 plus interest but less any sums she had received by reason of termination, and to grant her an appointment for two years, again at grade P.4, from the date of the present judgement. If the Organization were not to adopt that option, it must pay her the equivalent of her salary and allowances for four years and six months at the rates prevailing at 31 January 1993, plus interest. She was also entitled to an award of 0.5 million French francs in damages for the grave material and moral injury she had suffered, plus an award of 50,000 francs in cost.

C. Decisions of the World Bank Administrative Tribunal[16]

JUDGEMENT NO. 147 (14 MAY 1996): JOSEPH LOPEZ VS. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT17

Termination on the ground of unsatisfactory performance — Evaluation of staff performance is discretionary decision of Bank — Staff rule 7.01 — Importance of procedural guarantees surrounding discretionary decisions — Relocation of staff in discretionary decision — Question of a supplemental review — Procedural flaws relating to the administrative review process, confidential records and unusual security measures — Confidentiality of the appeals proceedings

The Applicant, who had joined the service of the Respondent on 14 February 1984, was a Senior Personnel Officer, at level 24, on the Personnel Team for Latin America and the Caribbean Region of the Personnel Management Department, having been transferred from the Institutional Personnel Tem of the Department effective 1 October 1992, where he had acted briefly as Chief Personnel Officer from I March 1992 to mid-April 1992. The Applicant had received good performance reviews during his career with the Bank, but problems had begun to emerge as from 1991-1992, particularly with regard to his negative interaction with other members of his team.

Ultimately, by memorandum to the Applicant dated 9 September 1993, the Chief Personnel Officer advised him that unless by 11 February 1994, there was sharp and sustained improvement of his interpersonal relationships with his team members, he would be terminated, pursuant to staff rule 7.01, section 11.02, for unsatisfactory performance. A subsequent extension of this review period to accommodate the Applicant's home leave brought the end of the period to 31 March 1994. After the review period, the Applicant's performance was evaluated as satisfactory; however, the conclusion also was reached that the Applicant was unable to function as a Senior Personnel Officer on the Latin American and Caribbean Region Team and that his presence on the team seriously undercut the effectiveness of the team. Inquiries about reassignment were made extensively, and it was further concluded there were no good prospects of the Applicant's performing satisfactorily anywhere in the Bank Group, and the Applicant was notified that his employment with the Bank would be terminated, effective 3 June 1994. He was placed on administrative leave (with full pay) through 30 June, on the ground that his continued presence in the office was seriously disrupting the work of the team. The Applicant appealed.

In considering the merits of the case, the Tribunal recalled that it would not substitute its judgement for the discretionary decisions of the Bank's management, particularly in terms of the evaluation of staff performance, and that the "Administration's appraisal in this respect is final, unless the decision constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure" (Saberi, Decision No. 5 (1982);

Suntharalingam, Decision No. 6 (1982); Buranavanichkit, Decision No. 7 (1982); Durrant-Bell, Decision No. 24 (1985).

In the Applicant's view, the requirement for such termination that there be serious and substantive performance problems had not been met, nor had any allegation of such problems been adequately substantiated. However, the Tribunal noted that serious problems regarding the Applicant's interaction with various personnel teams involved in different stages of his career had emerged long before the decision was taken to terminate his employment, and those problems had been adequately documented in the relevant performance reports. And while the Applicant had good working relationships with other groups from different departments, the Tribunal further noted that this positive aspect did not warrant overlooking negative team interactions, particularly to the extent that tense discussions and hostile attitudes had emerged as a result.

The Applicant also raised the issue of the meaning of staff rule 7.01, section 11.01, as then in effect, that "if performance remains unsatisfactory" it could result in termination of employment. In the Applicant's view, termination of service could be decided upon only if performance had remained unsatisfactory during the probationary period since the intention of the provision was not to bring about the termination of service of a staff member but to offer him a chance to improve his performance with the object precisely of avoiding termination. The Tribunal noted that the Respondent had shared this understanding because, in a memorandum dated 9 September 1993, invoking the staff rule, it was explained that termination could follow in the "absence of a sharp and sustained improvement", an improvement which obviously had to take place during the probationary period.

Subsequently, a difference of opinion had arisen between the Respondent and the Applicant as to whether the necessary improvement had occurred. However, the determination of that question was within the Bank's discretion, and the Tribunal could find nothing in the circumstances of the case to support the view that the Bank had exercised this discretion improperly. The Tribunal noted that the favourable feedback given to the Applicant in respect of his performance during the two months of his probation had not fettered the Bank's freedom to make a discretionary appreciation of the period of probation as a whole.

Turning to the procedural aspects of the case, the Tribunal had stated on other occasions that "the very discretion granted the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected (Salle, Decision No. 10 (1982)). Two basic guarantees have been defined by the Tribunal in connection with due process: "First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself" (Samule-Thambiah, Decision No. 133 (1993)).

In the present case, the Tribunal noted that problems with collegial interaction had been present for some time and warning had been given to the Applicant by the Respondent on various occasions, and it was not necessary for such warnings to have taken a specific form such as advance notice of termination. The Tribunal further noted that because of prior warnings the Applicant had agreed on more than one occasion to improve his performance short comings, and that the granting of a low salary increase had clearly indicated to the Appli-

cant that his performance was not entirely satisfactory. Under those circumstances, the Applicant had certainly not been deprived of the opportunity to improve or rebut the criticism that had been made.

The Applicant had also made the argument that few areas of required competence (in the Bank's usage called "competencies") had identified in the notice of probation, and that in any event such criteria as been included were still being debated and had not been formally adopted by the Bank. However, Tribunal considered that those criteria were applied throughout the Bank, that those chosen had been pertinent to the area of deficient performance covered by the probation and, most importantly, that the Applicant had been informed in great detail of the criteria that would be used to evaluate his performance. Furthermore, these criteria had been discussed with the Applicant and changes had been made to accommodate some of his concerns. Therefore, in those circumstances the Tribunal did not find any evidence of discrimination against the Applicant.

The Applicant had also raised the issue related to the Respondent's determination that there was no other place for him at the Bank. In response, the Tribunal recalled that the Bank's decision in that regard had again been a discriminatory one and, in any case, all necessary efforts to secure him another position had been made by the Respondent.

Another point raised by the Applicant concerned the supplemental review which had been prepared by his previous Chief Personnel Officer of the Institutional Personnel Team of the Personnel Management Department and incorporated in the 1993 performance review report.

The Tribunal pointed out, however, that supplementary reviews were expressly authorized under staff rule 5.03, section 2.03, in order to complete a performance record, particularly if several persons had been supervising the staff member during a given year. There could be no doubt that the supplemental review might be appealed after the supervisor had written his own evaluation, since the purpose of such review was to make available material for consideration by the Management Review Team, which, was the final authority under the performance review procedure. It would, of course have been inappropriate if the supplemental reviews had been added after the Management Review Team review was completed, but here, the procedure relating to the supplemental review was not contrary to the requirements and guarantees of due process.

The Tribunal, however, did point several procedural flaws. One related to the fact that the first administrative review requested by the Applicant objecting to the decision to put him on probation had been concluded not within the 30-day period mandated by staff rule 9.01, but only after 73 days. Another failure of due process was related to the handling of confidential information and records. A copy of a confidential document concerning the Applicant had not been destroyed as it should have been, nor had it later been placed in the Applicant's career file. A second breach of confidentiality had arisen when confidential medical records of the Applicant had been given to the investigator, who was investigating a claim of harassment against the Applicant, under staff rule 2.02, section 2.01.

Finally, when the Applicant was placed on administrative leave in connection with the decision to terminate is employment, unusual security measures had been taken, including his being forbidden to return to his office; and when he did, security guards, had accompanied him. The Tribunal noted that if there had been any serious risk of violence or disruption, the Respondent was under a duty to take appropriate security precautions, but in the present case, however tense and unpleasant the working environment surrounding the Applicant might have been, there was no evidence of him being violent or threatening any form of physical disruption. The Tribunal concluded that the security measures had been excessive and caused the Applicant moral injury.

The Tribunal ordered the Respondent to pay US $20,000 to the Applicant for the danger caused by the above-mentioned procedural flaws.

Before the Tribunal dismissed the other pleas of the Applicant, it addressed the issue of whether testimony before the Appeals Committee should be kept confidential in all circumstances.

The Respondent had objected to the use of such testimony by the Applicant before the Tribunal on the ground that under the Rules of Procedure of the Appeals Committee "all Hearings of the Panel shall be in camera" (staff rule 9.03, annex B, rule 1 and 15 (*a*)). The Tribunal found that the requirement that hearings should be held in camera referred to the privacy of the meetings of the Appeals Committee and to the general confidentiality of the proceedings before it, but did not forbid the invocation of such testimony before it, but did not forbid the invocation of such testimony before the Tribunal, if relevant, particularly having in mind that proceedings before the Tribunal also were not made public. The objection by the Respondent was accordingly overruled.

D. Judgement of the Administrative Tribunal of the International Monetary Fund[18]

JUDGEMENT NO. 1996-1 (2 APRIL 1996): MR. M. D'AOUST V. IMF19

Complaint against initial grade and salary — Matter of jurisdictive ratione personae — Tribunal's competence in request of the Grievance Committee. Acceptance of grade and salary does not bar challenge of the legality of its determination — Laws of procedural irregularities and facual error in appointment process — Assignment of grades to posts in an exercise of discretionary authority — Question of a "regulatory decision" issue of notice of an administrative practice

In 1992, the Fund interviewed several candidates, including the Applicant, for the position of "compensation officer" which had been advertised internally at grade A13/A14. Because of certain reallocations of the responsibilities of that position as formerly held, the position as regarded was offered to, and accepted by Mr. "X" at grade A12, at a starting salary of $63,000. After the completion of his initial two-year fixed term, Mr. X. was promoted to grade A13. In 1993, it was decided to recruit an additional, less senior staff member. That search was advertised internally at grade A10/A11, and when no suitable inter-

nal candidates applied from within the Fund, Mr. D'Aoust was asked by the recruitment officer if he would still be interested in the Fund, without mentioning the grade of the post. The Applicant was then interviewed by the official who would be his supervisor who, although the position had been advertised internally at grade A10/A11, concluded that because of a need for a more experienced officer, the new position should be set at the A12 level. The Fund thereupon offered the Applicant a post at grade A12 with a salary of $64,000, and when the Applicant responded that that salary was insufficient, the Fund offered, and the Applicant accepted, the salary of $65,800.

The Applicant commenced work on 6 December 1993, and on 28 February 1994, he requested that his salary be increased, pursuing his claim through various stages up to the Director of Administration. On 3 February 1995, the Director informed him that he had denied the request but nevertheless authorized a $1,000 annual salary increase effective 20 January 1995, the reason being that the outside consultant whom he had engaged to perform an independent review of the matter had observed that there seemed to have been some misunderstanding between the Applicant and the Fund as to the exact status of the job offered which might justify an equitable adjustment. On 31 January 1995, the Applicant submitted his grievance to the Grievance Committee, which on 13 June 1995 recommended to the Managing Director that the grievance be denied. On 21 July 1995, the Managing Director confirmed to the Applicant that he had accepted that recommendation. The Applicant appealed.

Before considering the merits of the case, the Tribunal decided the issue of jurisdiction ratione personae. At the time when the Fund had decided on the grade and salary of the position offered to the Applicant, he was not yet a staff member, nor did he meet the other criterion, as set out in article II, section I, of the Statute of the Tribunal, for the Tribunal to consider an individual's application.

However, the Tribunal concluded that since the offer and acceptance of a particular grade and salary affected him or a staff member, the Tribunal was competent to adjudge his case.

Another issue related to the competence of the Tribunal respecting the Grievance Committee's procedures and recommendations. The Applicant had requested the Tribunal to review the Grievance Committee's "decision" because he had alleged that substantive and procedural irregularities had been committed in those proceedings.

The Tribunal pointed out that the Grievance Committee was not competent to take final decisions, but rather recommendations. Moreover, the Tribunal was not limited as it would be if it were a court of appeal; e.g., it made findings of fact or needs, or holdings of law. The Tribunal might take into account the treatment of an Applicant before, during and after recourse to the Grievance Committee. The Tribunal was authorized to weigh the record generated by the Grievance Committee as an element of the evidence before it.

The Applicant contended that he had been considered for the same job twice, once in 1992, and the second time in 1993, a contention disputed by the Fund. The position open in 1992 had been filled by Mr. X. The Applicant maintained that when in 1993 put to him was in terms of "performing the same as the one for which I had been interviewed, obviously not the same position, but the same job". Therefore, he argued, the two jobs should have carried an identical grade of A13. (The Tribunal noted that the position initially advertised at the level of A13 had been offered to and accepted by Mr. X at the A12 grade.)

The Applicant also averred that he had understood that the salary was to have been set on the basis of the total years of his relevant previous experience and in comparison with a number of other similarly situated staff members. Instead, in the calculation of his salary, only 10 years of his relevant prior experience had been taken into account in accordance with the Fund's practice in respect of non-economists (the methodology of truncating the value attributed to prior experience at 10 years), and only the grade and salary of a single comparator (Mr. X) had been weighed. He further alleged that "factual errors" had been made in the calculation of his salary by the mistaken use of the economist matrix and that "procedural anomalies" had taken place in that certain requirements, i.e., the formulation of a new job description and the internal advertisement of the vacancy, had not been met. He accordingly concluded that his grade and salary had been inappropriately set.

The Respondent argued that terms and conditions in a letter of appointment, such as grade and salary, were explicitly accepted by the staff member; that initial terms did not involve the exercise of unilateral authority by the Fund; and that therefore, those terms and conditions were presumptively binding upon the staff member who accepted them, absent a showing that they were blatantly mistaken (e.g., arithmetical or typographical error) or contrary to a mandatory rule of the Fund (e.g., a salary below the range associated with the grade of the position, or that their acceptance had been induced by fraud or misrepresentation.

The Tribunal sustained the Fund's position on the above question as a matter of presumption; the fact that a staff member accepted an offer that he or she was free to decline did weigh against challenge to the terms of the contract so accepted. But it was a question only of presumption. The Fund and an applicant for a position in the Fund were not in an equal negotiating position; e.g., as the present case showed the Fund was in possession of relevant information not within the knowledge of an applicant. Accordingly, while the presumption held the staff member nonetheless could be heard to argue contrary claims, as the present case, of misrepresentation of facts or irregularity in the process of appointment. The Tribunal concluded that the fact that Mr. D'Aoust had accepted his initial grade and salary did not bar him from challenging the legality of the Fund's determination of grade and salary.

Moreover, precisely what Mr. D'Aoust had accepted might be open to question. When the then Director of Administration considered Mr. D'Aoust's request for a revision of his grade and salary, he had found that events had occurred in the process of Mr. D'Aoust's appointment that had possibly created a certain degree of misunderstanding and confusion in his mind concerning "the exact status of the job". It was for that reason that the Director of Administration had decided to adjust the initial terms of Mr. D'Aoust's service by increasing his salary to $1,000 per annum as of 20 January 1995 and promoting him to grade A13 as of May 1995 under an unusual acceleration of the normal procedure, under which, as the Tribunal had been given to understand, promotions were not given to fixed-term staff before their conversion to regular staff. From those facts the Tribunal deduced that there was room for doubt as to whether there had been a true meeting of the minds regarding the nature of the job at the time Mr. D'Aoust had accepted his position. If there had not been such a meeting of minds, Mr. D'Aoust could be treated to his detriment as if there were, The Tribunal accordingly concluded on this ground as well that the fact that Mr. D'Aoust had accepted his initial grade and salary did not bar him from challenging the legality of their determination.

Regarding the issue of the Applicant's grade, the Tribunal considered that while the fund's perception was that the Applicant had been recruited to fill a position clearly junior to that discussed with him in 1992, the Applicant did not appear to share their perception. Nevertheless, on the basis of the evidence available to it, the Tribunal concluded that the 1993 position offered to and accepted by the Applicant differed from the 1992 position discussed with him but offered to Mr. X, as did the qualifications to be fulfilled by the holders of those positions. Thus, there was no legal obligation of the Fund to confer the same grade in both positions on the ground of an identity which did not exist.

The Applicant also had alleged that procedural irregularities and factual error in the process of his appointment had caused the Fund wrongly to offer him the grade and salary that he had accepted. That classification and grading was an exercise of discretionary authority, subject to judicial review only for irregularity, was settled jurisprudence (Lyra Pinto versus IBRD, Decision No. 56 (WBAT Report 1988, part I). International administrative tribunals have emphasized the importance of observance by an organization of its procedural rules, for instance, on the internal publication of vacancies so as to enable the staff members of the organization to apply for the vacant position (in re Diotallevi and Tedjini, Judgement No. 1272, ILOAT, 75th session). At the same time, they have held procedural irregularities and error to be irrelevant where actions or missions did not affect the decision of the complainant or his financial interests.

Before Mr. D'Aoust accepted a position with the Fund, he could not have been acquainted with its procedures. Any procedural failures by the Fund of which he was then unaware, e.g., in not re-advertising the position, or any errors in the computation of the salary that the Fund offered him, accordingly could not have influenced his decision to accept the position. Moreover, the salary that the Fund initially offered him was renegotiated at the time to his advantage. Consequently, the Tribunal did not accept Mr. D'Aoust's contentions concerning the effect of the procedural irregularities and factual errors in the process of his appointment which he cited.

The Applicant asserted that the Fund had abused its administrative discretionary authority in its assignment of grade and salary to his position.

International administrative tribunals have regularly held that the assignment of grades to posts is an exercise of discretionary authority. Tribunals have been reluctant to interfere in the grading of posts, holding that the evaluation of the work to be done and the degree of responsibility involved, factors on which the grading depends, should be performed by persons trained to apply the relevant technical criteria. (in re Dunand and Jacquemod, Judgement No. 929 (ILOAT, 65th session)). They have substituted their own assessment or required that a new assessment be made only where the evaluation of a post was tainted by irregularity (in re Garcia, Judgement No. 591 (ILOAT, 51st session)).

Mr. D'Aoust indeed asserted that he had been misled as to the nature of the job offered to him; and he maintained that the fact that he had been given a starting grade of A12 for a position that had been internally advertised as A10/A11 demonstrated the invalidity of the process by which the grade had been determined; for those reasons, he had been inappropriately graded. The Respondent denied that Mr. D'Aoust had been misled and maintained that since the job content of the position initially set at grade A10/A11 had been redefined, the assertion that the job had finally been graded at A10/A11 was incorrect because the duties and responsibilities of the position had been augmented.

The Tribunal found no evidence of Mr. D'Aoust having been deliberately misled. The Tribunal noted that the Fund had recognized that, despite the findings by the independent consultant that the system used in the Fund for determining starting grades and salaries had been correctly applied in the case of Mr. D'Aoust, in the discussions between him and personnel of the Recruitment Division leading up to his decision to accept the position there seemed to have been some difference in understanding as to the exact status of the job being offered relative to others in the personnel area. It was for that reason that the Fund had made what it considered an equitable adjustment of Mr. D'Aoust's situation. The adjustment consisted of a $1,000 per annum increase in salary and an accelerated promotion. The Tribunal did not equate any such misunderstanding with a deliberate misleading of Mr. D'Aoust by the Fund. Nor did that adjustment demonstrate that the initial determination of Mr. D'Aoust's grade and salary had been flawed.

It remained to be considered whether the Fund's practice of truncating the weight to be attached to the previous experience of non-economist applicants at 10 years when deciding upon their grade and salary had, in its application to Mr. D'Aoust, been wrongfully employed to adversely affect his initial salary. Whether that practice constituted a rule concerning the terms and conditions of staff employment is dealt with below. As to the merits or demerits of the practice as applied to Mr. D'Aoust, the Tribunal found that the Fund might not unreasonably favour economists in deciding upon the terms of staff employment since economics was at the heart of the Fund's mission. Thus when the Fund had applied the so-called non-economist matrix to the determination of the salary of Mr. D'Aoust, cutting off the credit given to his prior experience to 10 years, that of itself had not given rise to a cause of action against the Fund on the ground of inequality of treatment.

In light of the above considerations, the Tribunal concluded that the exercise of administrative discretion by the Fund in setting Mr. D'Aoust's grade and salary had not been invalidated by the procedures followed, including the 10 year truncation of his previous experience and the use of a single comparator. Nor had it been invalidated by irregularities alleged in those procedures which in any event had not been shown to have influenced that exercise. It might well be that, in the singular circumstances of the case, the Applicant and the Fund officials immediately concerned did not have a meeting of minds on the status of the position offered in 1993 to Mr. D'Aoust or on its relationship to the position not offered to him in 1992, but if so, that had not given rise to a sustainable complaint on the part of the Applicant.

The Applicant challenged the legality of what he construed as the regulatory decision on the basis of which his grade and salary had been determined, alleging that it had violated the Fund's internal law as well as general principles of law and had no basis in the Fund's policies or general administrative orders. In particular, he asserted that the methodology by which prior experience was treated differently in respect of economists or compared with non-economists (being taken into account only for a maximum of 10 years) constituted unlawful irregularity of treatment; that the system was rooted in systemic and gender discrimination; and that the system of determining grades was arbitrary. The Respondent's arguments concerned: (*a*) the Tribunal's jurisdiction over the challenge to the long-standing practice that truncated recognition of previous experience 10 years; and (*b*) the legality of that practice.

The Tribunal noted that, pursuant the article II, section 2, of its statue, it could have jurisdiction to review regulatory decision. However, the Tribunal further noted that in order to consider the lawfulness of the practice in question or "a regulatory decision" it must as a threshold matter widen the question of jurisdiction ratione materiae, that is to say, it must decide whether the practice was a regulatory decision.

The evidence in these proceedings showed that the practice of truncating the weight given to the previous experience of non-economists at 10 years had never been decided upon by the Executive Board, the Managing Director or the most senior officials of the Fund. The practice had been distilled in no rule, general administrative order, handbook or handout, statement on conditions of employment, contract or other published official paper of the Fund. Rather, at the time that that practice had been applied to Mr. D'Aoust, it was an unpublished practice known to and employed by a small number of officials of the Administration Department of the Fund. In view of those uncontested facts, the Tribunal was unable to regard the practice in question as flowing from or constituting a regulatory decision. That being its conclusion, it followed that the Tribunal laced jurisdiction to pass upon the practice as a regulatory decision, though it had found itself competent to consider the validity of the application of that practice to Mr. D'Aoust as an "individual rather than a "regulatory" decision.

At the same time, the Tribunal found it appropriate to observe that for the Fund to generate and apply a practice that affected the determination of the salary level of a substantial proportion of its staff, but which had been and was largely unknown, might require the consideration of the Managing Director. It was clear that neither the members of the staff of the Fund nor the Tribunal could adequately react to a practice which was at once real in its effects but so elusive in its origin, adoption, recording, articulation and transparency.

In the Tribunal's view, it might be added that notice by which rights and obligations were clearly conveyed was a requirement not only of due process. Such notice was an element of the structure of the Statute of the Administrative Tribunal of the Fund, and as a general proposition, it was held to be required by ample judicial authority.

In respect of the individual decision determining the grade and salary of the Applicant, the Tribunal decided that the application was rejected, and in respect of the alleged regulatory decision, pursuant to which such determination had been made, the Tribunal found no regulatory decision within the meaning of its statute on which to rule.

NOTES

[1] In view of the large number of judgements which were rendered in 1995 by administrative tribunals of the United Nations and related intergovernmental organizations, only those judgements which are of general interest and/or set out a significant point of United Nations administrative law have been summarized in the present edition of the Yearbook. For the integral text of the complete series of judgements rendered by the four Tribunals, namely, judgements Nos. 747 to 807 of the United Nations Administrative Tribunal, judgements Nos. 1464 to 7560 of the Administrative Tribunal of the International Labour Organization and decisions Nos. 147 to 155 of the World Bank Administrative Tribunal and

judgements No. 1996-1 of the Administrative Tribunal of the International Monetary Fund, see, respectively: documents AT/DEC/747 to 807; Judgements of the Administrative Tribunal of the International Labour Organization: 80th and 81st Ordinary Sessions; World Bank Administrative Tribunal Reports, 1996; and Administrative Tribunal of the International Monetary Fund, Judgement No. 1996-1.

[2] Under article 2 of its statute, the United Nations Administrative Tribunal is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.

The Tribunal shall be open: (*a*) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death; and (*b*) to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: International Civil Aviation Organization and International Maritime Organization. In addition, the Tribunal is competent to hear applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund.

[3] Hubert Thierry, Vice-President, presiding; and Francis Spain and Deborah Taylor Ashford, Members.

[4] Luis de Posadas, Vice-President, presiding; and Mayer Gabay and Deborah Taylor Ashford, Members.

[5] Hubert Thierry, Vice-President, presiding; and Francis Spain and Deborah Taylor Ashford, Members.

[6] Hubert Thierry, Vice-President, presiding; and Miknin Leliel Balanda and Mayer Gabay, Members.

[7] Luis de Posadas Montero, Vice-President, presiding; and Francis Spain and Deborah Taylor Ashford, Members.

[8] Luis de Posadas Montero, Vice-President, presiding; and Francis Spain and Mayer Gabay, Members.

[9] Hubert Thierry, Vice-President, presiding; and Francis Spain and Mayer Gabay, Members.

[10] The Administrative Tribunal of the International Labour Organization is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Labour Organization and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1996, 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 International Atomic Energy Agency, the World Intellectual Property Organization, the European Organization for the Safety of Air Navigation, the Universal Postal Union, the European Patent Organization, the European Southern Observatory, the Intergovernmental Council of Copper-Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization, the African Training and Research Centre in Administration for Development, the Intergovernmental Organization for International Carriage by Rail, the International Center for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization Interpol, the International Fund for Agricultural Development, the International Union for the Protection of New Varieties of Plants, the Customs Cooperation Council, the Court of Justice of the European Free Trade Association and the Surveillance Authority of the European Free Trade Association. The Tribunal is also competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organization.

The Tribunal is open to any official of the above-mentioned organizations, even if his employment has ceased, to any person on whom the official's rights have devolved on his death and to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the staff regulations upon which the official could rely.

[11] Sir William Douglas, President; Micheal Gentot, Vice-President; and Jean-François Egli, Judge.

[12] Sir William Douglas, President; and Micheal Gentot, Vice-President; and Jean-François *Egli, Judge.*

[13] Sir William Douglas, President; and Edilbert Razafindralambo and Jean-François Egli, Judges.

[14] Ibid.

[15] Sir William Douglas, President; and Edilbert Razafindralambo and Jean-François Egli, Judges.

[16] The World Bank Administrative Tribunal is competent to hear and pass judgement upon any applications alleging non-observance of the contract of employment or terms of appointment, including all pertinent regulations and rules in force at the time of the alleged non-observance, of members of the staff of the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation (referred to collectively in the statute of the Tribunal as "the Bank Group").

The Tribunal is open to any current or former member of the staff of the Bank Group, any person who is entitled to a claim upon a right of a member of the staff as a personal representative or by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision of the Staff Retirement Plan.

[17] Elihu Lauterpacht, President; Robert A. Gorman and Francisco Orrego Vicuna, Vice-Presidents; and Prosper Weil, A. Kamal Abul-Magd, Thio Su Mien, and Bola A. Ajibola, Judges.

[18] The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is empowered to review employment-related decisions taken by the Fund on or after 15 December 1992.

[19] Stephen M. 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)

PRIVILEGES AND IMMUNITIES

1. PRIVILEGES AND IMMUNITIES OF SPECIAL RAPPORTEURS WITHIN THE FRAMEWORK OF THE COMMISSION ON HUMAN RIGHTS, FOR INCLUDING IN A MANUAL – ARTICLE VI, SECTIONS 22, 23 AND 26, OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS[1]

Facsimile to the Chief of the Special Procedures Centre for Human Rights, United Nations Office at Geneva

Special rapporteurs representatives experts and members of working groups of the Commission on Human Rights, as long as those persons are neither the representatives of a State nor staff members (i.e. officials) of the Organization, are deemed, for the purposes of article VI, section 22, of the 1946 Convention on the Privileges and Immunities of the United Nations[1] (the General Convention), to be experts performing missions for the United Nations. In order to enable such persons to exercise their functions in an independent manner, the General Convention entitles experts, during the period of, and the time spent on journeys in connection with, their missions to the following functional privileges and immunities:

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

(*b*) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity is to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

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

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

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

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

However, experts on missions, unlike officials of the United Nations, enjoy no tax exemption on their official emoluments; no immunity from national service obligations; no immunity from immigration restrictions and registration requirements; and no rights on duty-free imports. The above-mentioned limited privileges and immunities are strictly designed to protect the interests of the United Nations in the privacy of its papers and communications and in preventing any coercion or threat thereof in respect of the performance of the experts' missions.

Experts on missions are not entitled to United Nations laissez-passer. But pursuant to section 26 of the General Convention, experts who have a certificate stating that they are traveling on official United Nations business are entitled to" similar facilities" normally accorded under the General Convention (section 25) to the holders of United Nations laissez-passer, i.e., officials of the Organization. The latter facilities, in particular, include (*a*) processing of visa applications (where required and when accompanied by a certificate stating that they are traveling on the business of the United Nations) as speedily as possible, and (*b*) granting other facilities for speedy travel.

The International Court of Justice, in its advisory opinion of 15 December 1989 on the applicability of article VI, section 22, of the General Convention in the case of Mr. D. Mazilu, Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection fo Minorities (who had been denied travel to Geneva by the former Romanian Government to attend the Subcommission in order to present a report prepared in his capacity as Special Rapporteur), inter alia, confirmed that:

> "Section 22 of the General Convention is applicable to persons (other than United Nations officials) to whom a mission has been entrusted by the Organization and who are therefore entitled to enjoy the privileges and immunities provided for in this section with a view to the independent exercise of their functions. During the whole period of such missions, experts enjoy these functional privileges and immunities whether or not they travel. They may be invoked as against the State of nationality or of residence unless a reservation to section 22 of the General Convention has been validly made by that State."[2]

According to section 23 of the General Convention, privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interest of the United Nations.

26 April 1996

2. QUESTION REGARDING THE IMPOSITION OF A PRICE EQUALIZATION TAX BY THE EUROPEAN UNION ON ARTICLES IMPORTED OR EXPORTED BY THE UNITED NATIONS AND AFFILIATED FOR ITS OFFICIAL USE – ARTICLE II, SECTIONS 7(A) AND SECTION 8 AND 34 OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Facsimile to the Chief of Procurement and Contracts of the World Food Programme

1. This is with reference to your facsimile of 21 May 1996 concerning the imposition of a price equalization tax by the European Union.

2. Please be advised that all States members of the European Community, with the exception of Portugal, are parties to the Convention on the Privileges and Immunities of the United Nations (the Convention).

3. Pursuant to the provisions of article II, section 7(*a*) of the Convention, "the United Nations, its assets, income and other property shall be exempt from all direct taxes". In accordance with section 7(*b*) of the Convention, "the United Nations, its assets, income and other property shall be exempt form customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use."

4. Section 8 of the Convention provides that "while the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax."

5. As a subsidiary of the United Nations, the World Food Programme enjoys the aforementioned privileges and immunities. Accordingly, it is clearly exempt from all direct taxes and from all customs duties and from prohibitions and restrictions on imports and exports in respect of articles imported or exported for its official use. It is entitled to remission or return of any amount paid for excise duties and indirect taxes.

6. Thus, if the tax in question is a direct tax on wheat/wheat flour in the European market or if it constitutes a customs duty on wheat/wheat flour imported or exported by WFP for official use, WFP is automatically exempt from payment thereof. If, however, the tax in question is charged as an excise duty or as part of the price to be paid, WFP is entitled to remission or return of any amounts paid for such duty or tax on important purchases of wheat/wheat flour.

7. Under section 34 of the Convention, States members of the European Community that are parties to the Convention have an obligation to be "in a position under [their] own law to give effect to the terms of this Convention."

8. Finally, 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. The tax in question would clearly and wrongfully impose a heavy financial burden on the Organization and would, therefore, be inconsistent with the Charter of the United Nations.

9. To the extent that WFP is a joint organ of both the United Nations and the Food and Agricultural Organization of the United Nations, it should be pointed out that the above-outlined position also applies to the specialized agencies on the basis of the corresponding provisions of the Convention on the Privileges and Immunities of the Specialized Agencies.[3]

10. The foregoing should be brought to the attention of the competent authorities of the European Community, who should be requested to resolve this matter in a manner consistent with the privileges and immunities of the United Nations and its specialized agencies.

22 May 1996

3. Obligations of the United Nations with respect to income tax levied by a Member State – article II, section 2, and article V, section 18, of the Convention on the Privileges and Immunities of the United Nations – Status of consultants

Facsimile to the Chief, Field Services, Division of Finances, Administration and Management, United Nations Children's Fund

1. This is with reference to your facsimile of 29 July 1996 concerning the obligations of the United Nations in [a Member State] with respect to the new income tax law. Our comments are as follows.

2. Based on the information provided, the new income tax law in [the Member State] requires every company or organization with employees to automatically deduct the income tax from the salaries paid and every person to submit an income tax declaration.

3. As a subsidiary organ of the United Nations, UNICEF enjoys the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations[4] (the Convention), to which [the Member State] is a party.

4. Article II, section 2, of the Convention provides that the United Nations, its property, funds and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process. Furthermore, pursuant to article V, section 8 (*a*) and (*b*) of the Convention, the officials of the United Nations shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity and exempt from taxation on the salaries and emoluments paid to them by the United Nations.

5. In accordance with the foregoing, the new income tax law dos not apply to the United Nations, its organs and subsidiary organs and subsidiary organs – their property, funds and assets, or their officials. Therefore, UNICEF should neither deduct the income tax from the salaries and emoluments paid to its officials nor provide any income declaration to the competent authorities of [a Member State]. With the exception of those who are recruited locally and assigned to hourly rates, officials of the United Nations in [that Member State] are exempt from taxation and should neither pay the new income tax on the salaries and emoluments paid to them by the United Nations nor declare such income for purposes of taxation.

6. Consultants, however, are neither "staff members" under the Staff Regulations of the United Nations nor "officials" for the purposes of the Convention. It is for UNICEF to determine the terms of appointment under which each of the consultants in question was engaged by UNICEF. Consultants may be accorded the status of "experts on missions" within the meaning of article VI of the Convention, or they may be engaged as independent contractors, in which case they may not have any status under the Convention. It should be noted, however, that, pursuant to the Convention, "experts on missions" are not exempt from taxation on the salaries and emoluments paid to them by the United Nations. To the extent that [the Member State's] law requires every person to submit an income declaration, it is for each consultant/independent contractor to determine whether he or she falls within the scope of the new income tax law and to fulfil his or her obligations in accordance with that law. In any case, standard special services agreements (SSAs) and other contractual arrangements provide that the United Nations undertakes no liability for taxes, duty or other contribution payable on payments made by the Organization under the SSA or contract. As such, UNICEF should neither deduct the income tax from payments made to consultants/independent contractors nor provide any declaration or statement of earnings on their behalf.

7. In the event that the Government of [the Member State] takes a different position than the United Nations on this matter, the Government should be advised of the privileges and immunities enjoyed by the United Nations, including, inter alia, those mentioned in paragraph 4 above. Moreover, pursuant to section 34 of the Convention, the Government of [Member State} has an obligation to be "in a position under its own law to give effect to the terms of this Convention."

8. Finally, 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 such as the new income tax law which might, inter alia, increase the financial or other burdens of the Organization have to be viewed as being inconsistent with that provision.

8 August 1996

4. GEOGRAPHICAL GROUPS AND CONTRIBUTIONS BY MEMBER STATES TO THE EXPENSES OF THE ORGANIZATION – ARTICLES 17 AND 19 OF THE CHARTER OF THE UNITED NATIONS – RULES 158 AND 160 OF THE RULES OF PROCEDURE OF THE GENERAL ASSEMBLY

Letter to the Senior Legal Adviser of the Universal Postal Union

This is with reference to your facsimile of 16 February 1996 to the Legal Counsel, requesting information on provisions of the Charter of the United Nations on geographical groups and on contributions by Member States to the expenses of the Organization.

As to your first query, membership in the United Nations, pursuant to Article 4 of the Charter of the United Nations, is open to all peace-loving States which accept the obligations contained in the Charter and, in the judgement of the Organization, are able and willing to carry out those obligations. The only explicit provisions of the Charter on geographical distribution concern the election of the 10 non-permanent members of the Security Council (Article 23, para. 1) and the recruitment of the staff of the Organization (Article 101, para. 3). It should be noted in this context that, since 1963, the General Assembly has adopted geographical distribution patterns for electing officers and members of various organs. While there is no classification based upon formal membership in a geographical group, Member States are characterized in these geographic patterns as African States, Asian States, Eastern European States, Latin American States, and Western European and other States.

In the practice of the United Nations, regional groups corresponding to the aforementioned geographic patterns have evolved as informal arrangements among Member States. The latter groups are based entirely on the agreement of Member States and serve as a mechanism for consultation and coordination among them, particularly on matters relating to elections and candidatures, in the light of the requirement for equitable geographical balance or regional rotation and distribution in United Nations organs and bodies. The members of certain regional groups also use the groups for discussion and consultation on policy issues. Moreover, since groupings of Member States by geographical region have evolved as an informal arrangement for a number of practical purposes, different groupings are sometimes used for different purposes, or in the context of different United Nations bodies.

The composition of the various groups is entirely in the hands of the groups themselves, and as such, is not a matter for the Secretariat. The current chairman of a specific group informs the Secretariat about changes in the composition of the group. As you may know, a country may belong to different groups for different purposes. For example, Turkey is a member of the Asian Group except for electoral purposes, in which case it is a member of the Group of Western European and Other States. It derives from the foregoing that it is up to the regional group concerned to decide whether a particular State should be included among the members of that group. The practice shows that a State cannot unilaterally decide to be considered as a member of a regional group without having obtained the assent of the group.

With respect to our second query, pursuant to Article 17, paragraph 2, of the Charter, "the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly". For this purpose, rule 158 of the rules of procedure of the General Assembly provides that the Assembly "shall appoint an expert Committee on contributions consisting of eighteen members." In accordance with rule 160, "the Committee on Contributions shall advise the General Assembly concerning the apportionment of the expenses of the Organization among Members, broadly according to capacity to pay" (emphasis added). Further to rule 160, "the scale of assessments, when once fixed by the General Assembly, shall not be subject to a general revision for at least three years unless it is clear that there have been substantial changes in relative capacity to pay". The Committee also advises the Assembly on the assessments to be fixed for new Members, 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.

It should be pointed out in this context that, pursuant to Article 19 of the Charter, "a Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have not vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contribution due form it for the preceding two full years. The General Assembly may, nevertheless, 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" (emphasis added).

26 February 1996

5. Executing agency and implementing agency status as determined by the United Nations Development Programme

Memorandum to the Director of the Division for Environment and Social Development

1. This is with reference to your memoranda of 19 December 1995 and 25 January 1996.

The United Nations as the executing agency[5]

2. In the context of United Nations Development Programme programme/project execution, the granting of executing agency status to entities is normally made by the deliberative bodies of the United Nations competent in UNDP affairs, the General Assembly, the Economic and Social Council or the UNDP Executive Board. In this regard, the United Nations was designated by the General Assembly as a partner and executing agency in the Expanded Programme of Technical Assistance, the predecessor of UNDP, and continued in this capacity after the Expanded Programme was merged with the Special Fund for the United Nations Development Programme. The United Nations is thus one of the original and main executing agencies of UNDP. The executing agency functions of the United Nations are carried out on the basis of specific arrangements between UNDP and the United Nations, based on the Standard Basic Executing Agency Agreement with the Specialized Agencies.[6] These arrangements are established by an

Exchange of Letters dated 23 October 1989 signed by the Administrator of UNDP and the Under-Secretary-General for the Department of Technical Cooperation for Development, the predecessor of the Department for Development Support and Management Services, on behalf of the United Nations.

The Department for Development Support and Management Services as the executing arm of the United Nations

3. The Department of Technical Cooperation for Development was established on 23 March 1978 by the Secretary-General (ST/SGB/162) to carry out the executing functions of the United Nations Secretariat in the field of technical cooperation as mandated by the General Assembly in its resolution 32/197 of 20 December 1977. The framework of such functions was outlined in paragraph 61 (*d*) (ii) of the annex to the resolution, which stipulated, inter alia, that the United Nations Secretariat shall conduct "(*d*) management of technical cooperation activities carried out by the United Nations in respect of:

(i) Projects under the regular programme of technical assistance;

(ii) Projects of the United Nations Development Programme for which the United Nations is the executing agency;

(iii) Projects financed by voluntary contributions from Governments and other external donors including funds in trust".

4. In establishing the Department of Technical Cooperation for Development, the Secretary-General stated in paragraph 2 of Secretary-General bulletin, ST/SGB/162 that the Department was "to manage the United Nations regular programme of technical cooperation and implement UNDP projects and projects financed from extrabudgetary resources for which the United Nations is the executing agency".

5. The name Department of Technical Cooperation for Development was changed to Department for Development Support and Management Services in 1993 without altering the executing agency responsibilities of the body. In his note to the General Assembly dated 3 December 1992 on the Restructuring and revitalization of the United Nations in the economic, social, and related fields (A/47/753), the Secretary-General reported that the Department would carry out two sets of related functions. The first will be to serve as a focal point for the provision of management services for technical cooperation. The second will be to act as an executing agency in selected cross-sectoral areas, with emphasis on the twin concepts of institutional development (including activities aimed at human capital formation and at enhancing the contribution of different social groups to development)".[7]

6. Aside from the regional commissions, which were designated by Economic and Social Council as executing agencies for UNDP regional projects, no other unit of the United Nations Secretariat has been designated as a UNDP executing agency in its own name. Accordingly, all other units of the United Nations Secretariat wishing to participate in UNDP programmes must do so under or thorough DDSMS.

Department of Humanitarian Affairs as implementing agency[8]

7. The UNDP rules permit an executing agency to use another United Nations entity as an implementing agency, to carry out certain activities of the project, where the entity has specialized expertise. The use of an implementing agency is usually determined by eh executing agency at the project formulation stage, after consultation with UNDP and the Government concerned, when it is found that such use is necessary and is in the best interests of the project because the implementing agency possesses specific expertise relevant to the project. The use of an implementing agency does not detract from the overall responsibility of the executing agency for the successful execution of the project.

8. In the present case, the determination that the Department of Humanitarian Affairs should be the implementing agency was made and approved through the signing of the project document by UNDP, the Department for Development Support and Management Services and the Governments concerned (see page 19 of project document (RAS/92/360)). Therefore, we do not see any legal impediment for the Department of Humanitarian Affairs to act as the implementing agency of this project for which the Department for Development Support and Management Services is the executing agency, and to carry out the activities specified under the project document.

Agency support cost[9]

9. The agency support costs related the execution of the project are calculated at the rate applicable to the executing agency concerned, as determined by the Executive Board of UNDP. In this case, the rate is that applicable to the United Nations Department for Development Support and Management Services, which is considered as one of the major UNDP executing agencies. When the executing agency is not the entity that actually carries out the project activities, the distribution of the agency support costs between the executing agency and its implementation agency is determined by the two agencies concerned. In the present case, we understand that a memorandum of understanding was concluded between the Department for Technical Cooperation for Development and the Office of the United Nations Disaster Relief Coordinator in 1986, setting out the terms and conditions applicable when UNDRO, now the Department of Humanitarian Affairs, carried out activities of a project for which the Department for Technical Cooperation for Development was the executing agency. The arrangements under the memorandum, in our view, continue to be applicable notwithstanding the change of name of Department for Technical Corporation for Development to Department for Development Support and Management Services and UNDRO to Department for Humanitarian Affairs, since the new entities are successors to the original signatories.

10. In conclusion, we do not see any legal impediment to the Department for Development Support and Management Services assigning the responsibility of implementing the activities under the project, for which that Department is the executing agency, to the Department of Humanitarian Affairs. The Department for Development Supply and Management Services continues to assume the overall responsibility for the project as the executing agency of the project. The apportionment of the agency support costs under the project should be governed primarily by the memorandum of understanding concluded by the parties in 1986 and by any other arrangements which the parties may agree to for this specific project.

10 April 1996

6. Rule 13 of the rules of procedure of the United Nations Conference on Trade and Development Authorities issuing credentials

Letter to the Senior Legal Officer, UNCTAD, Geneva

This is in reply to your facsimile by which you attached a letter from the mead of the delegation of [a Member State] to UNCTAD IX addressed to the Secretary of the Conference. In that letter, the [Member State] representative proposed amending rule 13 of the rules of procedure of the Conference to provide that credentials may be issued by authorities other than one of the three following authorities: Head of State or Government or Minister for Foreign Affairs. The representative stated that her delegation found the existing rule "somewhat burdensome". She also referred to a recently approved relevant rule in the context of the law of the sea.

With regard to the procedure to be followed for amendment, as you are no doubt aware, according to rule 83 of the rules of procedure of UNCTAD,[10] rule 13 "may not be amended until the Conference has received a report on the proposed amendment from the Bureau of the Conference".

As to reference to recent decisions in the context of the law of the sea, the relevant rule approved by the International Seabed Authority in March 1995 provides that credentials may be issued not only by the three authorities mentioned above, but also by any "person authorized by him". This rule is unclear in many respects, but what is most important to point out is that the law of the sea body concerned is a treaty body, not a United Nations body, and decisions taken by that body may not be cited as precedents in favour of United Nations bodies taking similar decisions.

It is true that often at international conferences of a short duration, more delegations submit only provisional credentials than is the case at the annual sessions of the General Assembly. But it is the established practice for the credentials committees of such conferences to approve such provisional credentials on the understanding that the formal credentials will be submitted in due course. This practice has not, to our knowledge, led to difficulties.

As concerns the proposal, it is our view that it would be inadvisable for the Conference to adopt it because it would lead to confusion and is at variance with the established practices and rules of United Nations bodies, including those of the General Assembly.

To add an additional authority who may issue credentials if "authorized" by one of the three existing authorities would, in our view, lead to confusion. For example, it is unclear which authority could "authorize" issuances, whether the authorization issued by one authority could supersede an authorization issued by another authority, and what is the length of time during which an authorization would remain valid. In addition, in the event of unstable or rival regimes, adding another possible credentials-issuing authority would increase the possibility for competing claims of accreditation.

UNCTAD is a subsidiary body of the General Assembly, whose rules provide that only the three authorities mentioned above may issue credentials. If UNCTAD adopted the envisaged amendment it would approve a rule at variance with the rule followed by its parent organ, the General Assembly. UNCTAD would be in the position of accrediting representatives on the basis of an autho-

rization considered "formal" by UNCTAD, but which could not be accepted as "formal" by the Assembly itself. As the General Assembly noted in its resolution 396 (*V*) of 14 December 1950, "difficulties may arise regarding the representation of a Member State in the United Nations and...there is a risk that conflicting decisions may be reached by its various organs". The Assembly by that resolution decided that its attitude concerning such difficulties should prevail.

2 May 1996

7. Status of a member between the elections of the members of a United Nations subcommission and the commencement of the session of that subcommission – economic and social council decisions 16 (LVI) and 1987/102

Memorandum to the Chief of the Legislation and Prevention of Discrimination Branch, Centre for Human Rights, Geneva

1. This is with reference to your facsimile of 6 May 1996 concerning the status of Mr. X between April 1996, the date of the elections of the members of the Subcommission on Prevention of Discrimination and Protection of Minorities, and 5 August 1996, the commencement of the session of that Subcommission, with respect to his membership in the Working Group on Contemporary Forms of Slavery.

2. Pursuant to Economic and Social Council decision 16 (LVI) of 17 May 1974, the Working Group on Contemporary Forms of Slavery is composed of five members of the Subcommission on Prevention of Discrimination and Protection of Minorities. Accordingly, members of the Working Group must also be members of the Subcommission. If an individual ceases to be a member of the Subcommission, he or she therefore also ceases to be a member of the Working Group.

3. In accordance with Economic and Social Council decision 1987/102 of 6 February 1987, newly elected members of the Subcommission begin to exercise their mandate immediately following their election. Accordingly, since the term of office of the newly elected members of the Subcommission begins on the date of election, the term of office of former members who are not re-elected ends on the date of election.

4. Based on the foregoing, since Mr. X was not re-elected as a member of the Subcommission in the most recent election, held in April 1996, Mr. X ceases to be a member of the Subcommission and of the Working Group as of that date of that election.

5. The newly elected Subcommission must therefore choose a fifth member of the Working Group from among the members of the Subcommission so that the Working Group may be fully constituted. Pending that decision, the Working Group consists of only four members.

8 May 1996

8. Status of the United Nations Institute for Training and Research

Letter to the Acting Executive Director of UNITAR

This is in response to your letter of 19 March 1996 wherein you seek the views of this Office on various questions posed in a letter to UNITAR. In the letter, the following questions are raised:

— Whether UNITAR is an autonomous institution within the framework of the United Nations;

— Whether it is correct to state that UNITAR does not have an independent and separate juridical personality from the United Nations and that legal capacity accorded to UNITAR is an extension of the legal capacity of the United Nations;

— Who is ultimately liable for acts done by UITAR;

— Whether it would be correct to state that the Secretary-General of the United Nations is ultimately responsible for acts done by UNITAR.

At its eighteenth session, the General Assembly took note of the endorsement by the Economic and Social Council of the Secretary-General's plan for the its training and research institute, and by resolution 1934 (XVIII) of 11 December 1963 it instructed the Secretary General to establish the United Nations Institute for Training and Research. Pursuant to that resolution, the Secretary-General in November 1965 promulgated the statute of the Institute, which defines its legal status, functions, administrative structure, sources of finance, location, etc. The statute has subsequently been amended several times by the Secretary-General in the light of the decisions concerning the restructuring of the Institute adopted by the General Assembly. The statute of the Institute was last amended in December 1989.

The statute defines UNITAR as an autonomous institution within the framework of the United Nations, established for the purpose of enhancing the effectiveness of the United Nations in achieving the major objectives of the Organization.

In accordance with the statute, the activities of UNITAR are governed by the Board of Trustees, whose members are appointed by the Secretary-General (article III).

The Institute has its own staff headed by the Executive Director, appointed by the Secretary-General after consultations with the Board (article IV). According to the statute, the staff of the Institute are officials of the United Nations and their terms and conditions of service are regulated by the United Nations Staff Regulations and Rules. However, under the statute, the Secretary-General may approve, on the recommendation of the Board, additional arrangements for special rules or terms of appointment of the staff of the Institute. Thus, where letters of appointment of persons holding contracts with the Institute are restricted to UNITAR service, the United Nations has no obligation to absorb and reassign such persons to other positions within the United States Secretariat, if UNITAR posts of such staff members are abolished.

The expenses of the Institute are not met from the United Nations regular budget. The Institute operates on the basis of paid-in voluntary contributions and such other additional resources as may be available (article VIII). The statute provides in this regard for the establishment of the General Fund and the Reserve Fund. The budget of the Institute is adopted by the Board of Trustees on the basis of proposals submitted by the Executive Director of the Institute. Although the United Nations Financial Regulations and Rules apply to the financial operations of the Institute, under the statute the Executive Director of UNITAR, in agreement with the Secretary-General and after consultations with the Advisory Committee on Administrative and Budgetary Questions, may issue additional special rules and procedures for that purpose.

It appears from the foregoing that as an institution established by the Secretary-General pursuant to General Assembly resolution 1934 (XVIII), UNITAR is a subsidiary body of the United Nations, which has the autonomy within the United Nations as defined by its statute. The autonomous character of the Institute means that although UNITAR constitutes an integral part of the United Nations and is bound under the Charter by the relevant decisions of its principal organs, the Institute, as provided for in its statute, undertakes its activities with sufficient autonomy and financially is not dependent on the regular United Nations budget.

As a subsidiary body of the United Nations, UNITAR is not an international organization established by an intergovernmental agreement. Therefore, it does not have its own legal personality. However, in order to facilitate the implementation of its functions, the Institute as an autonomous institution of the United Nations was provided under its statute with the authority to enter into contracts with organizations, institutions or private firms (article X, para. 2). Thus, the Institute has limited legal capacity which is drawn on the legal personality of the United Nations.

As noted in article X, paragraph 1, of the statute, as part of the United Nations UNITAR enjoys the privileges and immunities of the Organization provide under the Charter of the United Nations and other international agreements, in particular, the 1946 Convention on the Privileges and Immunities of the United Nations. However, as an autonomous institution of the United Nations whose expenses, according to the statute, shall be met form voluntary contributions, UNITAR is liable for its activities. Consequently, any liability arising from acts by UNITAR in the exercise of this function and legal capacity shall be met by the Institute from its own resources and cannot constitute a liability on other funds of the United Nations.

In accordance with Article 97 of the Charter of the United Nations, the Secretary-General is the chief administrative officer of the Organization. Therefore, as far as the administration of staff is concerned, the Secretary-General is responsible for overall compliance with the relevant policy decisions of the General Assembly and for consistent implementation and interpretation of the United Nations Staff Regulations and Rules.

The Secretary-General is not responsible under the Charter for acts done by United Nations subsidiary bodies or organs in the exercise of their functions. The fact that UNITAR was established by the Secretary-General does not imply

that he is responsible for acts done by that Institute, with the exception of those related to administrative matters, where the ultimate authority rests with the Secretary-General. As noted above, a decision to establish UNITAR was taken by the General Assembly and the Secretary-General subsequently acted on the instruction of the Assembly.

15 May 1996

9. Legal status of members of the national military contingents serving in United Nations peacekeeping operations – Model status of forces agreement

Memorandum to the Director of the Peacekeeping Financing Division

1. This is in reference to your memorandum of 19 April 1996, seeking our advice on the views of the Advisory Committee on Administrative and Budgetary Questions on the Secretary-General's report of 2 June 1995 (A/49/906) concerning death and disability benefits to members of national military contingents participating in United Nations peacekeeping operations.

2. You have indicated that, in its report on the death and disability benefits, the Advisory CHCE had stated, inter alia, that a necessary prerequisite for reviewing and possibly altering the current procedures on death and disability benefits "is an understanding and agreement on the precise legal status of contingent personnel and of the nature of their legal, administrative and operational relationship with the Organization and their Government".[1] You have accordingly requested us to provide a legal opinion on the legal status of contingent personnel, as recommended by the Advisory CHCE in its report.

Legal status of contingent personnel

3. Once the deployment of national contingents in peacekeeping operations is authorized by the Security Council, the contribution of such contingents by Member States to peacekeeping operations is made at the request of the Secretary-General. While assigned to a peacekeeping operation, military personnel of national contingents are an integral part thereof. Although they remain administratively attached to their respective national army, military personnel are, for the duration of their assignment, international personnel under the authority of the United Nations and subject to the authority of the Force Commander through his chain of command. Like all other members of a peacekeeping operation, they are expected to discharge their functions and regulate their conduct with the interest of the United Nations only in mind. While the Force Commander has general responsibility for the good order and discipline of the operation, responsibility for disciplinary action in national contingents rests with the commander of each of the national contingents.

4. Given the status of military personnel of national contingents in their home country and the fact that they are contributed by their respective Governments, there can be no direct contractual or statutory link between each individual military staff member and the United Nations. The terms and conditions under which they are contributed are agreed to between the United Nations and

the Government concerned. Such terms and conditions are set out in the model agreement between the United Nations and Member States contributing personnel and equipment to United Nations peacekeeping operations (A/46/185). The troop-contributing countries thus pay the basic salaries and allowances to all their contingent personnel in accordance with their own national legislation, subject to reimbursement by the United Nations of standard rate for pay and allowances for contingent personnel.[12]

5. The above-mentioned model agreement provides also for the legal status of military personnel of national contingents though such status is more elaborated in the model status of forces agreement (sofa) (A/45/594). Under that document, military personnel enjoy privileges and immunities which include immunity from criminal jurisdiction in respect of any criminal offences which may be committed by them in the mission area.[13] They also enjoy functional immunity and are not therefore subject to the civil jurisdiction of local courts or to other legal process in any matter relating to their official duties.

6. In the light of the foregoing, it is clear that, while members of national military contingents discharge international functions and serve in United Nations peacekeeping operations under the operational control of the Organization, no direct contractual or statutory relationship exists between them and the United Nations.

The terms and conditions of their assignment to United Nations peacekeeping operations are set out in bilateral agreements/understandings entered into between the Organization and their Governments.

24 May 1996

10. Authority of the Special Committee on Decolonization to hold meetings outside Headquarters – General Assembly resolutions 1654 (XVI), 46/181 of 1991 and 50/39

Memorandum to the Director of Conference Services

1. This is with reference to your memorandum of 3 June 1996 concerning the addition of the Pacific Region Seminar in [a Member State of that region] to the calendar of conferences and meetings to held in 1996 and 1997.

2. From a legal point of view, prior to addressing the addition of the seminar to the calendar of conferences and meetings, it is necessary to establish the legal basis for holding the seminar in the Pacific region.

3. It should first be recalled that, when the General Assembly decided to establish the Special Committee on the situation with regard to the Implementation of the Declaration on the Recruiting of Independence to Colonial Countries and Peoples pursuant to Assembly resolution 1654 (XVI) of 27 November 1961, it authorized the Special Committee "to meet elsewhere than at United Nations Headquarters, whenever and wherever such meetings may be required for the effective discharge of its functions, in consultation with the appropriate authorities". Furthermore, in its resolution 2621 (XXV) of 12 October 1970 containing the programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the

General Assembly directed the Special Committee "to hold meetings at places where it can best obtain first-hand information on the situation in colonial territories, as well as to continue to hold meetings away from Headquarters as appropriate".

4. In its resolution 46/181 of 19 December 1991, the General Assembly adopted the proposals contained in the annex to the 13 December 1991 report of the Secretary-General[14] to serve as a plan of action for the International Decade for the Eradication of Colonialism. In paragraph 22 (*c*) of the aforementioned annex it is proposed that the Special Committee, with the cooperation of the Administering Powers, should "organize during the Decade seminars in the Caribbean and Pacific regions alternately, as well as at United Nations Headquarters, to review the progress achieved in the implementation of the plan of action, with the participation of the peoples of the Non-Self-Governing Territories, their elected representatives, the Administering Powers, Member States, regional organizations, specialized agencies, non-governmental organizations and experts".

5. Pursuant to General Assembly resolution 50/39 of 6 December 1995, the Assembly approved the report of the Special Committee of covering its work during 1995, including the programme of work envisaged for 1996. Paragraph 97 of the report (A/50/23, Part I) provides that "the Special Committee will continue to fulfil the responsibilities that have been entrusted to it in the context of the Plan of Action for the International Decade for the Eradication of Colonialism approved by the General Assembly in its resolution 46/181 of 19 December 1991. The activities to be undertaken in this connection include a seminar in the Pacific region to be organized by the Committee in 1996, to be attended by representatives of all the Non-Self-Governing Territories".

6. In this context, subsection 3 of section 2 of the programme budget for the biennium 1996-1997 concerning the Special Committee includes provision for the travel, general operating expenses, and supplies and materials requirements "for two regional seminars (one per year) to be held in the Caribbean and Pacific regions".

7. Based on the foregoing, the General Assembly has clearly authorized the Special Committee to hold a seminar in the Pacific region in 1996.

8. Accordingly, the Pacific Region Seminar of the Special Committee should have been placed on the calendar of conferences and meetings of the United Nations issued in March 1996 (A/AC.172/1996/2). This oversight does not outweigh the fact that the proposed activities of the Special Committee, including the seminar in the Pacific region, were brought to the attention of, and considered and approved by, the General Assembly.

9. Thus, to the extent that the Pacific Region Seminar of the Special Committee has been authorized by the General Assembly and included in the approved programme budget for the biennium, it is clear that the substantive department should have included the seminar in its information on all meetings scheduled to be held in 1996 and 1997 and that, consequently, there can be no difficulties of a procedural nature in placing the seminar on the calendar at this point in time. What would have been a perfectly valid notification for the issuance of the calendar in March 1996 is certainly no less valid today.

3 June 1996

11. Dispute settlement procedures in United Nations agreements – Article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations

Letter to the Legal Counsel of the World Health Organization

This is in response to your letter of 7 June 1996 wherein you inquire whether the United Nations Legal Office has agreed that agreements may be concluded with the European Commission containing a dispute settlement clause, providing that these agreements shall be governed by Belgian law and that all disputes relating to their application, in the absence of an agreement by both parties to settle the disputes by arbitration, shall be brought before the competent national court in Brussels. According to your letter, you have been informed that dispute settlement clauses containing the above provisions have already been included in agreements signed by "several United Nations organizations".

This Office is not aware of any agreement signed by the United Nations, its programmes, funds or agencies which included, the dispute settlement clause referred to in your memorandum. Should such a clause have been suggested by the European Commission or any other entity for inclusion in an agreement with the United Nations, this Office would have been opposed to it.

United Nations agreements with public entities usually contain a dispute settlement provision, providing that any dispute relating to their interpretation or implementation which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either party. This provision is followed by a standard arbitration clause which reads as follows:

> "Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty (30) day of the request for arbitration either party has not appointed an arbitrator, or if within fifteen (15) days of the appointment of two arbitrators the third arbitrator has not been appointed, either party may request the President of the International Court of Justice to appoint an arbitrator. The procedure for the arbitration shall be fixed by the arbitrators. 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."

As for United Nations agreements of a commercial nature, they do not normally mention the applicable law. The legal basis for not specifying a particular national law as the governing law is the immunity of the United Nations form every form of legal process under article II, section 2, of the Convention on the Privileges and Immunities of the United Nations.15

At the same time, pursuant to article VIII, section 29, of the Convention, the United Nations is required to 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 of practical alternative to judicial proceedings, the United Nations offers arbitration to its contractors. The standard settlement of disputes clause currently used in United Nations contracts read as follows:

Amicable settlement

The parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

Arbitration

Any dispute, controversy or claim between the parties arising out of or relating to this contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this article within sixty (60) days after receipt by one party of the other party's request for such amicable settlement, shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. [Either party may, at its option, request the American Arbitration Association to provide administrative services for such arbitration and/or serve as the Appointing Authority under the Rules, in which case the American Arbitration Association shall be deemed to have been so designated.] The arbitral tribunal shall have no authority to award punitive damages. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute." (Please note that the wording in brackets is optional.)

26 June 1996

12. Procedures for the election of the members of the Committee on Economic, Social and Cultural rights – Articles 16, 21 and 22 of the International Covenant on Economic, Social and Cultural Rights Economic and Social Council resolutions 1988 (LX) and 1985/17 and decision 1978/10

Memorandum to the Acting Secretary of the Economic and Social Council

1. This is with reference to your letter of 11 July 1996 concerning [a Member State's] intention to submit a draft resolution to the Economic and Social Council on changing the procedures for the election of the members of the Committee on Economic, Social and Cultural Rights. Our comments are as follows.

2. Based on the information provided, [the Member State] has indicated that it intends to submit a draft resolution pursuant to which the Council would recommend to "the States parties to the 1966 International Covenant on Economic, Social and Cultural Rights[16] that they consider articles 21 and 22 relating to the follow-up of the Covenant with a view to amending it in order to establish a monitoring body such as those created by similar human rights bodies so that the States parties may elect the members of the Committee on Economic, Social and Cultural Rights".

3. Under articles 16 through 22 of the Covenant, the Economic and Social Council is given various responsibilities. In particular, pursuant to article 16, the Council is to consider the reports submitted by the States parties to the Covenant. No article in the Covenant mentions, establishes or provides for the establishment of the Committee on Economic, Social and Cultural Rights. The Committee is a subsidiary neither of the Covenant nor of the States parties to the Covenant.

4. Paragraph 9 of Economic and Social Council resolution 1988 (LX) of 11 May 1976 provides that a "a sessional working group of the Economic and Social Council, with appropriate representation of States parties to the Covenant, and with due regard to equitable geographical distribution, shall be established by the Council whenever reports are due for consideration by the Council, for the purpose of assisting it in the consideration of such reports". In its decision 1978/10 of 3 May 1978, the Council established the Sessional Working Group on the implementation of the International Covenant on Economic, Social and Cultural Rights for the purpose of assisting the Council in the consideration of reports submitted by States parties to the Covenant, in accordance with Council resolution 1988 (LX). Pursuant to its resolution 1985/17 of 28 May 1985, the Council decided that the Working Group established by Council decision 1978/10 should be renamed "Committee on Economic, Social and Cultural Rights". It is clear from the foregoing that the Committee is a subsidiary of the Council established by the Council for the purpose of assisting the Council in the consideration of the reports received from the States parties.

5. Accordingly, while the States parties to the Covenant are free to amend the Covenant in accordance with the procedure set out in article 29 of the Covenant, it is the sole prerogative of the Economic and Social Council to determine the organization and composition of its own subsidiaries, including, inter alia, the Committee on Economic, Social and Cultural Rights. Furthermore, in the event that the States parties wish to amend the Covenant in order to create monitoring body of its own, such monitoring body, like the States parties themselves, would not automatically have authority over the Economic and Social Council or any subsidiary thereof.

6. As to the election of the members of the Committee paragraph (*c*) of the Economic and Social Council resolution 1985/17 provides that the members of the Committee shall be elected by the Council by secret ballot from a list of persons nominated by States parties to the Covenant. As such, it is for the States parties to nominate and for the Council to elect. No member of the Committee can therefore be elected without the endorsement of at least one of the States parties.

7. It would be inadvisable for the Economic and Social Council to recommend that the States parties to the Covenant or a subsidiary of the States parties to the Covenant or a subsidiary of the States parties should elect the members of its own subsidiary. As the parent organ, the Council should retain the right to elect eh members of its own subsidiaries which are entrusted with assisting it in carrying out its responsibilities. In this context, it should be noted that article 16 of the Covenant provides that reports from States parties to the Covenant shall be submitted to the Secretary-General, who shall transmit copies "to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant". While it is clear that reports are sub-

mitted only by the States parties to the Covenant, nowhere in the Covenant is it indicated or implied that consideration by the Council should in the first instance be made only by those members that are States parties.

8. In the event that the Economic and Social Council agrees to recommend that the States parties elect the members of the Committee, it would be for the Council to determine the effect that such a change in the election procedures would have on the status and entitlements of the Committee and its members. Currently, in accordance with paragraphs (*b*) and (*e*) of the Economic and Social Council resolution 1985/17, the members of the Committee shall, respectively, serve in their personal capacity and receive travel and subsistence expenses from United Nations resources. The latter is consistent with the United Nations system of travel and subsistence allowance, whereby such expenses shall be paid in respect of members of organs and subsidiary organs who serve in an individual capacity and not as representatives of Governments. Accordingly, as long as the Committee remains a subsidiary of the Economic and Social Council and as long as the members of the Committee continue to serve in their personal capacity, and unless otherwise decided by the Council or the General Assembly, the members or the Committee will continue to receive travel and subsistence allowance.

18 July 1996

13. Economic and Social Council resolutions 1986/35 and 1992/8– Status of special rapporteurs in United Nations bodies

Memorandum to the Senior Legal Officer at the United Nations Office at Geneva

1. This is in response to a request of the Centre for Human Rights seeking the opinion of this Office on the present status of Ms. X, a former member of the Subcommission on Prevention of Discrimination and Protection of Minorities who at the forty-seventh session of the Subcommission was appointed as Special Rapporteur and entrusted with the task of undertaking an in-depth study of the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict. It is our understanding that the Centre is interested in knowing, in particular, whether Ms. X, who is no longer a member of the Subcommission, should be invited to attend the forthcoming forty-eighth session of the Subcommission and whether a report prepared by Ms. X on the aforementioned subject at the request of the Subcommission should be processed as a document of the Subcommission.

2. Pursuant to Economic and Social Council resolution 1986/35 of 23 May 1986, members of the Subcommission are elected by the Commission on Human rights for a term of four years as experts in their individual capacity (emphasis added). Ms. X was elected a member of the Subcommission in 1992 and her term expired in April 1996.

3. In accordance with the practice followed by many United Nations bodies, the Subcommission from time to time appoints rapporteurs or special rapporteurs entrusted with the task of studying specific subjects.

4. By its resolution 1992/8 of 26 August 1992, the Subcommisssion adopted the guidelines concerned its methods of work. Guideline 4 contains provisions regulating the appointment by the Subcommisision of its rapporteurs.

5. Paragraph 2 of that guideline provides that the duties of rapporteur are in principle (emphasis added) exercised by members of the Subcommission. The inclusion of the words "in principle", in our view, implies that in some exceptional cases the Subcommission may appoint rapporteurs who are not members of the Subcommission.

6. It is further stated in paragraph 3 of guideline 4 that, when the rapporteur for an ongoing study is no longer a member of the Subcommission, he or she may be retained in the post of rapporteur for more than one year after the date on which his or her mandate expires, unless the Subcommission decides otherwise. It appears from this provision that, if necessary, a former member may be retained by the Subcommission as its rapporteur for one or even more years and that a decision to that effect can be taken only by the Subcommission.

7. It is worth noting in this regard that in its advisory opinion of 15 December 1989 on the applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations,[17] the International Court of Justice made the following observation with reference to the past practice of the Subcommission concerning the appointment of rapporteurs:

> "55. ...These rappoeteurs or special rapporteurs are normally selected from among members of the Subcommission...Furthermore, in numerous cases, special rapporteurs appointed from among members of the Subcommission have completed their reports only after their membership of the Subcommission had expired."[18]

8. The advisory opinion also refers to the letter, which was sent on 1 July 1988 by the then Under-Secretary-General for Human Rights after consulting this Office, to the Permanent Representative of Romania to the United Nations, stating that if a member of the Subcommission was mandated by the Commission to prepare a report on a particular subject, it was only the Subcommission or a superior body that would be competent to change that designation.

9. Ms. X was appointed by the Subcommission as Special Rapporteur at its forty-seventh session on 18 August 1995. She was requested to prepare an in-dept study on an important subject referred to above and to submit a preliminary report to the Subcommission at its forty-ninth session. At the time of the adoption by the Subcommission of its decision concerning the appointment of Ms. X as Special Rapporteur, members of the Subcommission were of course aware of the fact that term of office of Ms. X. would expire before the forty-eighth and forty-ninth sessions of the Subcommission, scheduled for August 1996 and August 1997, respectively, and that there was no guarantee that Ms. X would be re-elected for another term.

10. It is also interesting to note that the decision of the Subcommission on the appointment of Ms. X was reconfirmed by the Commission on Human Rights at its fifty-second session on 19 April 1996, only three days before the Commission on 22 April held an election of Subcommission members. That means that eh Commission proceeded with the endorsement of the appointment of Ms. X as Special Rapporteur in spite of the fact that she had not been nominated by the

Government and therefore could not be re-elected as a member of the Subcommission. Moreover, a draft decision to that effect is currently under subcommission by the Commission to the Economic and Social Council for approval. It is anticipated that the Council will act on this proposal no later than 23 July 1996.

11. In the light of the foregoing, we believe that Ms. X remains Special Rapporteur of the Subcommission entrusted with the responsibility of preparing a report referred to in Subcommission resolution 1995/14. We are also of the view that Ms. X will retain her current status until the Subcommission or one of its superior bodies decides otherwise. Consequently, Ms. X, in our opinion, should be invited to the forthcoming session of the Subcommission and the report prepared by Ms. X on the subject assigned to her by the Subcommission should be processed as a document of the Subcommission.

19 July 1996

14. Public information activities of the United Nations General Assembly resolution 595 (VI)

Facsimile to the Director of the United Nations information centre in Paris

1. This is with reference to your memorandum of 2 September 1996 concerning the proposed "partnership" between the United Nations information center for [a Member State] and a high school [of the State]. Our comments are as follows:

2. In accordance with the basic principles underlying the public information activities of the United Nations, approved by the General Assembly in its resolution 595 (VI) of 4 February 1952, the basic policy of the United Nations, approved by the General Assembly in its resolution 595 (VI) of 4 February 1952, the basic policy of the United Nations, in the field of public information, is to promote an informed understanding of the work and purposes of the Organization among the peoples of the world. To this end, the Department of Public Information should primarily assist and rely upon the services of existing official and private agencies of information, educational institutions and non-governmental organizations.

3. In order to implement this basic policy, the Department of Public Information and its branch offices should, inter alia, "maintain a reference and inquiry service, brief and arrange for lecturers, and make available appropriate materials for use by national information services, education institutions and other governmental and non-governmental organizations".[19]

4. Based on the aforementioned principles, while they should primarily assist and rely on the services of educational institutions, United Nations information centres should not enter into formal relationships therewith. Accordingly, the proposed draft agreement between the United Nations and the high school should not be concluded.

17 September 1996

15. Interpretation of rule 160 of the rules of procedure of the General Assembly, regarding the reassessment of a Member States contribution

Memorandum to the Secretary of the Committee on Contributions

1. This is with reference to your memorandum of 22 October 1996 by which you requested our advice on a question raised by a Member State of the Committee on Contributions, regarding the interpretation of rule 160 of the rules of procedure of the General Assembly [with respect to a request by a Member State for a reassessment of its contribution based on new per capita income data].

2. The relevant part of rule 160 reads as follows:

> "The Committee on Contributins shall advise the General Assembly concerning the apportionment, under Article 17, paragraph 2, of the Charter, of the expenses of the Organization among Members, broadly according to capacity to pay. The scale of assessments, when once fixed by the General Assembly, shall not be subject to a general revision for at least three years unless it is clear that there have been substantial changes in relative capacity to pay. The Committee shall also advise the General Assembly...on appeals by Members for a change of assessments..."

Accordingly, a distinction must be drawn between a general revision due to substantial changes in relative capacity to pay and an appeal by a Member for a change of its own assessment.

3. The member of the Committee raised the question whether the relative capacity to pay of more than one Member State would have to change in order to justify a general revision. He concluded that "the scale cannot be subject to general revision unless the changes have taken place widely". From our reading of the text, the member's interpretation is logical and correct. The rule refers to a general revision affecting all States. The phrase "substantial changes in relative capacity to pay" not only includes the requirement that the changes be substantial, but also that they relate to the "relative" capacity to pay among the membership. The relativity in question refers to each State's capacity to pay as compared to every other State. Thus, a general revision could take place if the substantial changes in relative capacity to pay affected States generally, not limited to one State alone.

4. The Member State in question has requested a reassessment of its own contribution and not a general revision. If, in the view of one State, changes in its assessments are required, the procedure is set forth in the provision of rule 160 which indicates that Members may appeal to the Committee for a change of assessments. For example, a State may claim that owing to a change in circumstances affecting its capacity to pay, its assessment should be changed and, thus, it may appeal to the Committee for a change in its own assessment without necessarily affecting the assessments of other States already fixed by the Assembly. In this connection, it is our understanding that just as newly admitted Members are assessed without entailing a general revision changing the assessments already fixed for other Members, the assessment of one Member may be revised without affecting the fixed assessments of other Members, should the Committee and the General Assembly so decide.

8 November 1996

16. QUESTION WHETHER THE UNITED NATIONS HAS AN INSURABLE INTEREST IN UNITED NATIONS-OWNED PROPERTY AND CONTINGENT-OWNED CARGO FOR WHICH THE ORGANIZATION ARRANGES SEA SHIPMENT

Memorandum to the Director of the Field Administration and Logistic Division, Department of Peacekeeping operations

1. This is in response to your memorandum of 21 November 1995, requesting our advice on whether the United Nations has an insurable interest in United Nations-owned property and contingent-owned cargo for which the United Nations arranges sea shipment.

2. It is of course clear that the United Nations has an insurable interest in United Nations-owned property. This memorandum will therefore only address the question of whether the United Nations has an insurable interest in contingent-owned property.

3. In this connection, you have informed us of an interdepartmental meeting held on 20 October 1995, comprising representatives from the United Nations Insurance Section, Purchase and Transportation Service, and Field Administration and Logistics Division, and have forwarded to us a copy of the minutes of that meeting. As indicated in those minutes, "the general consensus by the attendees was that the United Nations has a responsibility to insure the cargo when it accepts responsibility for arranging the movements of both United Nations-owned cargo (UNOE) and cargo owned by the contributing countries (COE)".

4. We note that, in his report on reimbursement for COE, THE secretary-General stated that:

> "The responsibility of the United Nations with respect to loss an damage incurred during shipping when the United Nations makes the transportation arrangements is recognized and arrangements are being made to obtain adequate insurance coverage."[20]

While the General Assembly has not yet taken action on the Secretary-General's report, the Secretary-General has already accepted the need for insurance of COE for which the Organization is responsible for transportation.

5. The general rule, customarily followed, is that "an insurable interest exists when the insured derives pecuniary benefit or advantage by the preservation or continued existence of the property or will sustain pecuniary loss from its destruction[21] (emphasis added). In this connection, it is worth noting that when goods are entrusted in the United Nations for shipment, the United Nations is in the position of consignee or bailee. A consignee, or bailee, has a responsibility to the owner, or bailor, to account for all goods received and it is this responsibility that gives the consignee, or bailee, an insurable interest[22]. It would therefore seem that, having accepted the responsibility for shipment of COE, the United Nations, either as consignee or bailee of such COE until delivered to the contingent, has an insurable interest in such goods.

6. In conclusion, since as indicated above the United Nations is exposed to liability for loss or damage of contingent-owned equipment for which it arranges sea transportation, it has an insurable interest in such equipment.

9 February 1996

17. Question of whether a disclaimer of liability is sufficient for exemption of financial liability in the absence of medical clearance

Memorandum to the Chief, Personnel Section, International Trade Centre UNCTAD/WTO (ITC)

1. This is in response to your memorandum of 26 July 1996, seeking my advice on a proposed exemption from medical clearance of an individual who is being considered by ITC for a short-term consultancy assignment, under a reimbursable loan arrangement with his employer. The expert will travel to various countries in Africa and Asia for ITC. The individual, who is 66 years of age, refuses to undergo a medical examination. You seek my advice on retaining the individual without a medical examination but with a disclaimer of liability.

2. Exempting an individual from a medical examination would, for the reasons set out below, expose ITC to significant financial liability. Accordingly, we recommend that ITC should not hire this individual unless he is medically cleared.

3. Paragraph 26 of administrative instruction ST/AI/297 of 19 November 1982 provides, in relevant part, that:

> "26. A subscriber [to a special service agreement] who is expected to work in any office of the Organization shall complete a statement of good health. Subscribers may not be authorized to travel outside the country of their normal residence at the expense of the United Nations unless the subscriber concerned submits a statement from a recognized physician certifying that eh subscriber is in good health, is fit to travel and has had the required inoculations for the country or countries to which the subscriber is to travel. If the appropriate statement is qualified in any way or cannot be provided, the appropriate United Nations medical service must be consulted" (emphasis added).

4. The first reason why the individual must have a medical clearance is simple: it is required by the rules. Moreover, the rule has an important basis: it is to ensure that eh Organization does not send an individual into an area, or assign him or her duties, for which he or she is not fit. Should the Organization do so, it would be responsible for illness or death caused by the individual's presence in an area caused by the performance of duties for which he or she was not fit.

5. Viewed from a different perspective, the United Nations routinely makes provision for service-incurred injury, illness or death in its consultancy contracts, and Appendix D to the Staff Rules applies these benefits to its staff. Indeed, this responsibility is accepted because such responsibility is inherent in

its relationship with not only staff but also with individuals who perform services for it (experts on mission). Should the Organization attempt to obtain a disclaimer, it is apparent that such disclaimer would, at a minimum, if it is not simply declared invalid, be interpreted against the Organization. Indeed, it is interesting to note that the United Nations Administrative Tribunal has stated that even if an individual consents to the Organization breaking one of its own rules this does not enable the Organization to use that consent to defend a claim by the staff member based on the rule (Judgement No. 508, Rosetti, para. XV). The same principle may well be held to apply to claims by survivors of experts on mission.

6. Secondly, as a practical matter, should the expert be hospitalized or otherwise require medical attention in the field during the course of performing services for the Organization, the United Nations will as a matter of practice have to guarantee payment for admission to a hospital or treatment facilities. Medical clearance is thus crucial.

9 August 1996

18. Insurance for acts or occurrences at United Nations Headquarters – General Assembly resolution 41/210

Memorandum to the Director of the Promotion and Public Services Division, Department of Public Information

1. This responds to a memorandum of 27 August 1996 form the Officer-in-Charge of the Guided Tours Unit. In connection with an upcoming tour by students of a school, the Guided Tours Unit has been asked to provide the school authorities with a certificate of insurance. Our advice concerning what guidelines were available was requested so that a response to the school could be prepared.

2. As you may know, since 1986, the United Nations has provided "self-insurance" in respect of all acts or occurrences at Headquarters.[23]

3. In connection with the arrangements for self-insurance for acts or occurrences at Headquarters, the General Assembly moved to limit the liability of the Organization. Thus, by its resolution 41/210 of 11 December 1986, the General Assembly enacted Regulation No. 4 of the United Nations Headquarters district. Pursuant to that resolution, the liability of the United Nations for damages sustained by third parties (e.g., visitors) in respect of acts occurring within the Headquarters district is limited to: (*a*) a maximum of $100,000 per occurrence for non-economic losses (e.g., pain and suffering), and (*b*) the maximum prescribed compensation set forth in the Rules Governing Compensation to Members of Commissions, Committees or Similar Bodies in the Event of Death, Injury or Illness Attributable to Service with the United Nations per occurrence for economic losses. Additionally, no compensation is payable in respect of punitive, exemplary or moral damages.

4. In the light of the foregoing, you may wish to inform the school that the United Nations is self-insured for all acts or occurrences giving rise to injury or losses to third parties, such as visitors, within the United Nations Headquarters district. Accordingly, the United Nations cannot provide the requested certificate of insurance.

4 September 1996

FINANCIAL ISSUES

19. LEGAL FRAMEWORK FOR THE UNITED NATIONS DEVELOPMENT PROGRAMME'S USE OF DONATIONS FROM NON-GOVERNMENTAL SOURCES UNDP FINANCIAL REGULATIONS AND RULES

Memorandum to the Assistant Administrator and Director, Bureau for Finance and Administration, of the United Nations Development Programme

1. This is in reference to your recent request for our review of the legal framework for the United Nations Development Programme's use of non-governmental donations.

2. You have indicated that UNDP would like to increase participation by the private sector in operational activities in developing countries and, in particular, to facilitate donations by individuals and corporations in donor countries by ensuring that their donations receive tax deductions status under national laws, where such status is not already enjoyed.

Legal basis

3. The legal basis for UNDP's acceptance of donations from non-governmental sources can be traced to the mandate provided to the predecessor of UNDP, the Special Fund. The Special Fund was established by the General Assembly as a new administrative and operational machinery to spearhead the enlargement of the scope of technical assistance and, in particular, "to facilitate new capital investments of all types – private and public, national and international – by creating conditions which would make such investments either feasible or more effective.[24] The Fund was merged with the Expanded Programme of Technical Assistance by the General Assembly in its resolution 2029 (XX) of 22 November 1965 to form the United Nations Development Programme. In that resolution, the General Assembly stipulated that "the special characteristics and operations of the two programmes, as well as two separate funds, will be maintained." (para. 1).

4. One such characteristic of the Special Fund was its authority to receive contributions from non-governmental sources. The General Assembly stipulated in its resolution 1240 (XIII) of 14 October 1958 that the financial resources

of the Fund shall be derived from "voluntary contributions by Governments of States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency, and further stated that the Fund "is also authorized to receive donations from non-governmental sources" (part B (VI), para. 45).[25] Thus, in line with the General Assembly's decision to maintain the special characteristics of the two programmes and funds, UNDP from its earliest beginnings has been authorized to receive donations from non-governmental sources.[26]

5. Moreover, as a result of diminishing government contributions, the General Assembly has repeatedly called for new ways of mobilizing increased resources. In its resolution 35/81 of 5 December 1980, for example, the General Assembly invited:

> "the governing bodies of the relevant organs, organizations and bodies of the United Nations system, as appropriate, to consider new and specific ways and means of mobilizing increased resources for operational activities for development on an increasingly predictable, continuous and assured basis" (para. 7).[27]

6. The requirements of the UNDP Financial Regulations and Rules must be viewed in the light of UNDP's basic mandate and the General Assembly's entreaties to governing bodies in favour of new ways of mobilizing increased resources.

UNDP Financial Regulations and Rules

7. We have reviewed the UNDP Financial Regulations and Rules, in particular, regulations 4.14 to 4.16 on "Donations". Regulation 4.14 provides that donations form "intergovernmental and non-governmental sources" may be accepted by UNDP, for purposes consistent with those of UNDP; but the Regulations then go on to impose restrictions on the amounts of donations which UNDP may accept and the manner of their reporting. Regulation 4.15 stipulates that donations for the general support of UNDP shall be credited to the UNDP Account and that donations for specific purposes are to be treated under the provisions for cost-sharing (article IV) or trust funds (article V), as appropriate. Regulation 4.16 provides that individual donations of a value in "excess of $25,000 shall be accepted only with the prior approval of the Executive Board".

8. Thus, while under the present Regulations UNDP can already directly accept donations under $25,000 from non-governmental sources, including individual and corporate sources, as long as they are for purposes consistent with those of UNDP donations in excess of that amount require the approval of the Executive Board.

9. In addition to the requirement for approval by the Executive Board of donations in excess of $25,000, rule 105.6 requires the Administrator to report contributions (donations) to trust funds from non-governmental sources in excess of $100,000 to the Board.[28] The rule reads:

> "Contributions to trust funds accepted by the Administrator form non-governmental sources of value in excess of $100,000 shall be reported annually to the Executive Board."

10. It is clear that the Financial Regulations are too restrictive on receipt of private donations of UNDP programmes and do not reflect the initial mandate provided to the Special Fund or the more recent exhortations by the General Assembly for governing bodies to mobilize new sources of funding, as a result of diminished government contributions. In this regard, we note that the United Nations Population Fund already requested, and received on 1 July 1988, authorization of individual donations of up to $100,000 without the prior approval of the Council.[29]

11. It would seem to us that UNDP's Financial regulations and Rules will need to be revised to reflect the need to attract private capital contributions to the UNDP programmes. As a start, there may be a need to eliminate the distinction between "contributions" and "donations" and treat both as part of UNDP financial resources to be credited as general resources of UNDP. This would entail, inter alia, the elimination of the monetary limit for the Executive Board's approval of donations, and establishment of specific modalities for private fundraising, including those discussed below. Should you decide to undertake this revision of the Regulations and Rules, we remain available to assist as required.

Tax deductibility of such donations under United States Law

12. Concerning the tax deductibility of donations from non-governmental sources from donor countries, we illustrate the complexities of certain systems by using the United States as an example. Under United States law, the Internal Revenue Code of 1954 (IRC), section 170, cfr. Subsection (*a*), allows a tax exemption for certain charitable contributions. Pursuant to subsection (*c*), paragraph 2 (*A*), only entities created under United States law enjoy tax-exempt status. Public international organizations in which the United States participates by treaty or executive agreement, such as the United Nations, are not included in the definition of entities eligible to receive a "charitable contribution" under section 170 (*c*). Thus, direct contributions to the United Nations and its subsidiary organs, including UNDP, are not considered deductible for income tax purposes.

13. Contributions from United States citizens and corporations for UNDP activities may, however, be tax-deductible if made to a properly established United States foundation (as further explained in para. 14 below) which is authorized to transfer the contributions to UNDP. Such an organization must itself satisfy the requirements of section 170 (*c*) of the IRC. The United Nations Association of the United States of America and the United Nations Association of the United States Committee for UNICEF are both organizations of this nature, through which channeling of donations is accepted according to United States law.

14. United States law does not, however, permit, a charitable organization to function solely as a channel for contributions from individuals to an organization not recognized by the Internal Revenue Service as a proper recipient of contributions. Such an entity would then be regarded as a mere "conduit" of funds to a non tax-exempt recipient. It would therefore be necessary for the charitable organization to have substantial outside activities in addition to the channeling of contributions to UNDP.

15. Should UNDP wish to purse this further, the Executive Board could then be requested to establish the terms and conditions for cooperation with such tax-exempt entities and to approve a model agreement for such cooperation.

8 April 1996

20. ALLOWANCES AND BENEFITS FOR INTERNATIONALLY RECRUITED STAFF UPON CHANGE IN IMMIGRATION STATUS GENERAL ASSEMBLY RESOLUTION 49/241 – STAFF RULES 104.7, 104.9 9 (*c*) AND 107.27 (*a*) – TRAVEL EXPENSES, REMOVAL COSTS AND REPATRIATION GRANT

Memorandum to the Operational Services Division
Office for Human Resources Management

1. By a memorandum dated 13 December 1995, you requested that we provide you with advice concerning the benefits to which Mr. X is entitled upon his separation from service, following his retirement from the Organization in January 1996.

Background

2. Your memorandum indicated that Mr. X is a [Member State] national and that [the Member State] was the country from which Mr. X was recruited. Your memorandum also stated that Mr. X recently obtained permanent residency status ("green card" status) in the United States from the United States immigration authorities and that Mr. X's change in immigration status was approved by the Office for Human Resources Management in view of his imminent retirement. Your memorandum noted that, prior to Mr. X's obtaining a change in immigration status, the Office for Human Resources Management had authorized an advance shipment of his personal and household effects at the expense of the Organization.

Finally, your memorandum stated that the Assistant Secretary-General for Human Resources Management has, in one form or another, agreed to Mr. X's request that he retain his "international benefits" upon retirement and separation from the service of the Organization despite his change in immigration status.

General principles

3. You have asked about "international benefits" to which Mr. X may be entitled in the light of the change in his immigration status. Staff rule 104.7 (*a*) states, in pertinent part, that "allowances and benefits in general available to internationally recruited staff include: payment of travel expenses upon initial appointment and on separation for themselves and their spouses and dependent children, removal of household effects...and repatriation grant." In connection with the designations of "internationally recruited" staff, staff rule 104.7 (*c*) provides that "(*a*) staff member who has changed his or her residential status in such a way that he or she may, in the opinion of the Secretary-General, be deemed to be a permanent resident of any country other than that of his or her nationality may lose entitlement" to one or more of such benefits "if the Secretary-General considers the continuation of such entitlement would be contrary to the purposes for which the allowance or benefit was created". Finally, staff rule 104.7 9(c) indicates that the "conditions governing entitlement to international benefits in the light of international status are shown in appendix B to (the Staff) Rules applicable to the duty station".[30]

4. Staff rule 104.7 thus contemplates the possible loss of some "international benefits" upon a change in permanent residency status, as would be the case with Mr. X. However, discretion is given to the Secretary-General, or his delegate, to determine whether or not continuation of one or more of such benefits would be warranted in an individual case. Unless a specific staff regulation or rule applicable to "international benefits" were to prohibit the Secretary-General from exercising discretion over making such a benefit or allowance available to Mr. X, the Assistant Secretary-General for Human Resources Management would have discretion in granting "international benefits" to Mr. X upon his retirement and separation from service, provided that doing so is consistent with "the purposes for which the allowance or benefit was created".

5. In order to determine whether and in which circumstances the Administration may have discretion in providing "international benefits" to Mr. X, we have reviewed the Staff Regulations and Rules to determine the applicable criteria and discretion concerning the allowances and benefits which may be affected by a change in his United States immigration status from G-4 to permanent residency (green card).

Repatriation grant

6. Pursuant to staff regulation 9.4, staff members may be entitled to a repatriation grant upon their separation from the service of the Organization "under the conditions specified in annex IV" to the Staff Regulations. The question is whether, in view of the change in Mr. X's immigration status in the country of his duty station, he is entitled to this benefit.

7. By its resolution 49/241 of 6 April 1995, the General Assembly promulgated a number of changes to the Staff Regulations to ensure that "repatriation grant and other expatriate benefits are limited to staff who both work and reside in a country other than their home country" (emphasis added). In particular, the Assembly amended annex IV of the Staff Regulations to provide as follows (additions are italicized):

> "In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate and who at the time of separation are residing, by virtue of their service with the United Nations, outside their country of nationality. The repatriation grant shall not, however, be paid to a staff member who is summarily dismissed. Eligible staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General."

8. The amended text plainly states that only staff who meet, at the time of separation, the condition of living and residing in a country other than their home country are entitled to a repatriation grant, in whole or in part. Given this clear and express directive of the General Assembly, promulgated as an annex to the Staff Regulations, the Administration cannot justifiably pay a repatriation grant to a separating staff member who does not meet such criteria, particularly as the General Assembly took this action to reverse the contrary jurisprudence of the Tribunal.[31]

9. Mr. X has, prior to his separation from service, established residency in the United States, the country of his duty station. Mr. X's recent application for permanent residency status in the United States is inconsistent with any intention to relocate outside the country of his duty station, the fundamental prerequisite for the payment of the repatriation grant. Accordingly, pursuant to the explicit criteria established by the General Assembly, Mr. X cannot be eligible for repatriation grant. Moreover, given the express mandate of the General Assembly concerning eligibility for repatriation grant, there is no discretion available to the Secretary-General, or his delegate, by which the repatriation grant may be given to Mr. X in these circumstances. Accordingly, unless Mr. X can establish that he is relocating from the country of his duty station (and this would seem to require his surrendering his green card), he will not be entitled to a repatriation grant upon his retirement and separation from service.

Payment of travel expenses by the Organization

10. Staff regulation 7.1 provides that "subject to conditions and definitions prescribed by the Secretary-General, the United Nations shall in appropriate cases pay the travel expenses of staff members, their spouses and dependent children". Thus, whether Mr. X is entitled to reimbursement of travel expenses upon his retirement and separation is dependent children". Thus, whether Mr. X is entitled to reimbursement of travel expenses upon his retirement and separation is dependent on the conditions and definitions specified by the Secretary-General for such reimbursement.

11. Staff rule 107.1 (*a*) (vi) provides, in pertinent part, that "subject to the conditions laid down in [the Staff] Rules, the United Nations shall pay, in the case of service at an established office, the travel expenses of a staff member's eligible family members...on separation of a staff member from service", provided such service was longer than one year.

12. Neither staff rule governing reimbursement of travel expenses of a staff member and his or her eligible family members upon the staff member's separation is expressly dependent on the immigration or nationality status of the staff member. Staff rule 104.7 (*a*) implies that such a benefit is payable only to internationally-recruited staff with the apparent purpose that such reimbursement should be paid in order to assist the staff member and his or her family in departing from the duty station and returning to the country from which he or she was recruited. However, as noted above, staff rule 104.7 (*c*) provides for discretion in granting entitlement to such a benefit in cases in which the benefit could be paid consistently with its purpose.

13. Accordingly, if the Assistant Secretary-General for Human Resources Management may have found that, notwithstanding Mr. X's change in immigration status, it is appropriate for Mr. X and his eligible family members to travel to the Member State from which he was recruited upon his retirement and separation from service, perhaps because it is not unreasonable to expect that Mr. X may retain a separate residence in [the Member State] as well as in the United States. In any event, the Assistant Secretary-General for Human Resources Management has decided to reimburse Mr. X for such travel expenses, and as he had discretion to take such a decision, Mr. X is entitled to rely on that decision.

Payment of removal costs by the Organization

14. Staff regulation 7.2 provides that "subject to conditions and definitions prescribed by the Secretary-General, the United Nations shall in appropriate cases pay the removal costs for staff members". Thus, whether Mr. X is entitled to reimbursement of removal costs upon his retirement and separation is dependent on the conditions and definitions specified by the Secretary-General for such reimbursement.

15. Staff rule 107.27 (*a*) (iv) provides, in pertinent part, that "when an international recruited staff member is to serve at an established office for a continuous period that is expected to be two years or longer, the Secretary-General shall decide whether...to pay costs for the removal of the staff member's personal effects and household goods...upon separation from service". The terms of the staff rule governing reimbursement of removal cost thus expressly links the benefit to "internationally recruited" staff. Staff rule 104.7 (*a*) implies that such a benefit is payable only to internationally recruited staff, again with the apparent purpose that such reimbursement should be paid in order to assist the staff member and his or her family in relocating to the country from which he or she was recruited. However, staff rule 104.7 (*c*) provides for discretion in granting entitlement to such a benefit in cases which the benefit could be paid consistently with its purpose.

16. The Assistant Secretary-General for Human Resources Management has apparently found that, notwithstanding Mr. X's change in immigration status, it is appropriate for Mr. X to ship household and personal effects to [the Member State from which he was recruited] upon retirement and separation from service, perhaps because it is not unreasonable to expect Mr. X to maintain a residence in [that State] as well as in the United States. As the Assistant Secretary-General for Human Resources Management has discretion to take such decision and has apparently done so, Mr. X is entitled to rely on that decision.

17. Pursuant to staff rule 104.7 (*c*), the Assistant Secretary-General for Human Resources Management has, in individual cases, undisputed authority to grant travel and removal costs to retiring staff members who have changed their immigration status. However, the over riding purpose of these benefits seems to us to be reimbursing internationally recruited staff for the costs of relocating to the country from which they have been recruited.

17 January 1996

21. Rules concerning the eligibility of staff to receive education grant – Staff regulation 3.2 – Staff rule 103.20 (*b*)

Memorandum to the Chief of the Rules and Regulations Unit Specialist Service Division, Office of Human Resources Management

1. This is in response to your memorandum of 28 December 1995, forwarding to us and seeking our views on a draft administrative instruction on dependents in no-family missions. Pursuant to a provision in the draft administrative instruction, staff members serving in no-family missions would become ineligible to receive education grant for their children if those children attend a school within a no-family mission area.

Executive summary

2. For the reasons set out below, we think that the Secretary-General has authority to prevent payment of education grant to staff who bring dependants into a no-family mission and send them to school in that area.

Rules concerning eligibility of staff to receive education grant

3. The payment of education grant is subject to the provisions of staff regulation 3.2, which reads, which reads, in relevant part, as follows:

> "(*a*) The Secretary-General shall establish terms and conditions under which an education grant shall be available to a staff member residing and serving outside his or her recognized home country whose dependent child is in full-time attendance at a school, university or similar educational institution..."

The terms and conditions for payment of the education grant, referred to in the above staff regulation, as set out in staff rule 103.20 (*b*) and in administrative instruction ST/AI/181 and its revisions. Staff rule 103.20 (*b*), entitled "Eligibility", also stipulates exceptions to this entitlement. Those exceptions comprise, inter alia, attendance at a kindergarten or nursery school; attendance at a free school or one charging only nominal fees; correspondence courses; private tuition; and vocational training.

4. As we understand it, because staff rule 103.20 (*b*) does not expressly prohibit eligibility for the grant if dependents attend schools in the area of no-family missions, some staff members, and notably the Field Service Staff Union, consider that they are eligible to receive the education grant in respect of their dependents attending schools in the area of those missions in direct contravention of express instructions directing staff members not to bring their dependents into the area.

5. In our view, staff rule 103.20 (*b*) does not contain an express reference to such cases because it presupposes that staff members would act in accordance with, and not in violation of, such express instructions. Having violated the direct order not to bring their dependents into the area of a non-family missions, they can hardly expect the Secretary-General to reward their action by paying education grant, particularly as the Administration notifies staff members in writing, prior to their deployment to non-family missions, that they should not be accompanied by their dependants. Notably, this express instruction is accepted by the staff member concerned, and such acceptance is attested to by the staff member signing the notification from the Administration containing the terms and conditions of the staff member's assignment to such a field mission.

6. Having regard to the foregoing, we are of the view that the Organization could refuse to pay education grant to staff members who bring their dependants into the area of no-family missions provided that such staff had been notified and had accepted, in writing, that the mission to which they are assigned is a no-family mission.

21 March 1996

22. Enforcement of a Member State's labour law with regard to local personnel recruited by United Nations Children's Fund – Article 101 of the Charter of the United Nations – Use of special service agreements

Memorandum to the Deputy Director of the Office of Administrative Management of UNICEF

1. This is in response to your memorandum dated 16 February 1996.

Background

2. By its note, which is dated 30 November 1995, Government of [the Member State] informed international organizations, diplomatic and consular missions in [the Member State] of the applicability of [the Member State's] labour law with respect to local personnel recruited by those institutions.

3. The note points out, in particular, that fixed-term appointments do not exist under the labour law. As a result, the natural expiration of a fixed-term appointment would be treated as an early termination of an indefinite appointment by the court of [the Member State]. In addition, rules regarding social security payments would apply to the employer, were the labour law of [the Member State] to apply.

4. UNICEF's activities in [the Member State] are governed by the Convention on the Privileges and Immunities of the United Nations of 1946[32] and by an Agreement with the Government of [the Member State] signed on 20 May 1954. The only reference to personnel in the agreement is made in article VI ("Relationship between the Government and the Fund in the carrying out of this Agreement"), paragraph C. The paragraph states that the Government would facilitate employment by UNICEF of citizens and residents in [the Member State] as may be required.

Analysis

5. In accordance with Article 101 of the Charter of the United Nations, staff of the United Nations, including its subsidiary organs, such as UNICEF, whether international or locally recruited, are appointed by the Secretary-General under regulations established by the General Assembly.[33] Such regulations are set out in the United Nations Staff Regulations and Rules, which embody the fundamental conditions of service and the basic rights, duties and obligations of the staff of the Organization.

6. Therefore, the terms and conditions of employment of staff members are exclusively set out in the United Nations Staff Regulations and Rules. According to this principle, which has become widely upheld by national courts of Member States, no national legislation is applicable to the terms and conditions of employment of UNICEF staff members, and thus the employment relationship between UNICEF and its staff, even if locally recruited, cannot be subject to national labour legislation.

7. In respect of non-staff members performing services for UNICEF, we understand that they are normally engaged either under special service agreements (SSAs)[34] or as employees of a contractor.[35] In both cases, such personnel

are to be considered as independent contractors, and thus it appears clear that there is a non-employee-employer relationship with UNICEF. Moreover, the functions performed by them are not those usually assigned to "employees", i.e., staff members, of the Organization. Therefore, we assume that [the Member State's] labour legislation should not apply to such personnel, as employees of UNICEF, since they are independent contractors vis-à-vis UNICEF.

8. However, we understand that in some places it has become a normal practice for UNICEF to use SSAs for individuals who are in reality performing staff or employee services. In other words, despite the nature of SSAs, some personnel are engaged under SSAs, indicating that they have the legal status of independent contractors, but in reality they are employees, being engaged on a full-term basis during an extended period of time, sometimes beyond that set out in UNICEF's instruction, and performing functions controlled by UNICEF supervisors, which in law may indicated that an employee-employer relationship exists with UNICEF (the so-called "control test").

9. This practice raises three problems:

(*a*) National courts may consider that such personnel are employees of UNICEF in respect of whom national labour legislation applies. While UNICEF is immune from every form of legal process, the SSA holder may be found in violation of national labour law by not having contributed to social security schemes, etc. Furthermore, the Government may take a dim view of such actions.

(*b*) Such improper use of SSAs may have unexpected financial consequences, as stated by the United Nations Administrative Tribunal in its Judgement No. 281, Hernandez de Vittorioso:

> "While the Tribunal is not unaware of reasons why the Administration may wish on occasions to use the special service agreement rather than to employ on fixed-term appointments, long-term and repeated use of the special service agreement may produce unintended consequences where work performed is full-time, continuous and in other important respects indistinguishable from the work of individuals in the same office who have the status of staff members." (emphasis added)

Furthermore, in Judgement No. 480, Lopez, it has been held that in such circumstances, the individual should be paid the difference between what she/he would have earned had she/he been employed as a staff member and what she/he earned as a consultant under the SSA, plus interest.

(*c*) The creation of two disparate regimes of employees, one subject to the United Nations Staff Regulations and Rules and the other not, but doing similar work, may result in labour unrest. Furthermore, not being part of either the social security scheme in the country or the United Nations system, such personnel may have no social security protection, thus opening UNICEF up to claims in the event of illness or death of a SSA holder.

10. In the light of the above, we would caution against the use of SSAs for situations and activities for which they are were not designed, e.g., for periods longer than 11 months without a break in service (see clause 24 of UNICEF instruction) and any of the situations set forth in clauses 17 to 20 of the UNICEF instruction. If the administrative rules for local staff do not provide for suffi-

cient flexibility, UNICEF should seek to have the issue raised in the Consultative Committee on Administrative Questions, with a view to developing a rational and effective policy to retain local staff, as we would assume that the problems faced by UNICEF must also be faced by other field-oriented and separately financed organs.

3 July 1996

23. Recovery of misappropriated funds from former staff members – Staff rule 103.18 (*b*) (ii) – General Assembly resolutions 47/211 and 48/218

Memorandum to the Personnel Officer, Administrative Reviews of United Nations Children's Fund

1. This is with reference to your memorandum dated 5 August 1996, requesting an opinion as to what remedies are available to UNICEF for recovery of misappropriated funds from staff members in two specific instances: (*a*) when staff members have been dismissed for fraud and the amounts owed by them far exceed the amount UNICEF may recover from their final entitlement; and (*b*) when fraud is discovered after a staff member has been separated from the Organization. Our comments are set out below.

Internal action: The Organization's current practice

(*a*) Accrued salary

2. Staff rule 103.18 (*b*) (ii) enables deductions to be made from salaries, wages and other emoluments for indebtedness to the United Nations. In cases where it is established that United Nations funds were misappropriated by a staff member, the first course of action is to attempt to recover the amounts involved from any accrued salary and other emoluments, including terminal payments, of the staff member. Where a staff member has received all final payments before the presumptive fraud is discovered, such administrative action is not possible unless the individual was found to be employed by another organization of the United Nations system. In such circumstances, it has sometimes been possible to make arrangements with the other organization to effect recovery on our behalf.

(*b*) Pension benefits

3. Attempts by the Administration to obtain direct recovery of indebtedness from the pension entitlements of staff members have been rejected by the United Nations Administrative Tribunal, which held that the regulations of the United Nations Joint Staff Pension Fund, promulgated by the General Assembly, precluded recovery of amounts due to the Organization from the pension benefits of separated staff. The Tribunal held, furthermore, that the Administration could not refuse to issue the documentation of the basis of which a staff member's pension benefits are processed, in an attempt to induce the former

staff member to repay to the Organization the sums misappropriated. The Tribunal considered, however, that the Administration and the Pension Fund should seek an appropriate solution in similar situations.

4. As a result, the Secretary-General amended the administrative instruction on the subject of the personnel payroll clearance action, to provide for the non-issuance of documents necessary for the processing of pension benefits following separation from service. The relevant provisions of the amended administrative instruction ST/AI/155/Rev. 2 now read as follows:

> "11. Staff members separating from service, in accordance with their contractual obligations to the United Nations, are responsible for:
>
> (*a*) Settling all indebtedness to the United Nations;
>
> . . .
>
> (*d*) Providing, in accordance with staff rule 104.4, the necessary documentary evidence as verification of the fulfillment of the responsibilities set out above.
>
> "12. The Under-Secretary-General for Administration and Management may refuse to issue the P.35 form [Personnel Payroll Clearance Action form] or may delay its issuance until a staff member has satisfactorily fulfilled the requirements set out in paragraph 11 above.
>
> "13. Staff are reminded that non-issuance of a P.35 form will prevent them from receiving their pension benefits since this form is required by the Pension Fund for the processing of those pension benefits. Staff are also reminded that failure to comply with the obligations set out in paragraph 11 above may result in the suspension of the separation procedure, which may delay any payments otherwise due to the staff member..." (emphasis added).

The experience of the Administration with S/AI/155/Rev. 2 has been positive. We consider that, should the matter be tested before the Tribunal, the procedures in the instruction would be upheld.

External action: suits in national courts

(*a*) Report of the Secretary-General of 9 November 1993

(i) Civil actions

5. The General Assembly, over the years, has expressed increasing concern over the issue of fraud or presumptive fraud within the United Nations. A report on "recovery of misappropriated funds from staff members and former staff members" A/48/572 was submitted to the General Assembly by the Secretary-General on 9 November 1993 pursuant to a request contained in General

Assembly resolution 47/211 of 23 December 1992.[36] In the report, the Secretary-General described the difficulties faced by the Organization in instituting civil action for recovery of misappropriated funds, where such misappropriation consisted of fraud in connection with United Nations entitlement:

> "12. Civil action for recovery of misappropriated funds requires proof of fraud by staff members. In this connection, a general problem arises if the alleged fraud consisted of breach of international United Nations regulations or rules (i.e., claiming and obtaining from the United Nations excessive or unwarranted reimbursement for medical expenses, education grant or income taxes.) In such cases, in order to determine whether the staff members' acts were fraudulent, the national court would have to interpret and apply those provisions of the internal regulations and rules of the Organization allegedly violated by the staff member concerned.
>
> "13. However, in many legal systems, a national court may find difficulties in, or even a legal impediment to, applying internal rules of an intergovernmental organization which do not have the force of law in that national legal system, unless they are the few regulations promulgated pursuant to Headquarters Agreements to the express exclusion of local law. Furthermore, the submission of disputes involving internal regulations or rules to national courts could result in interpretations conflicting with those given by United Nations organs or inconsistent with the policies and interest of the Organization."

6. The Secretary-General proposed to the General Assembly that the statute of the United Nations Administrative Tribunal should be amended to give it jurisdiction to adjudicate claims submitted by the Organization against staff members so that proceedings before national courts would be required only for enforcement of the judgement.

7. In section III of its resolution 48/218 of 23 December 1993, the General Assembly decided, inter alia, to study the possibility of the establishment of a new jurisdictional and a procedural mechanism, or the extension of mandates and improvement of the functioning of existing jurisdictional and procedural mechanisms. To that end, the General Assembly decided that an ad hoc intergovernmental working group of 25 members (the "Group of Experts") should be established to examine those questions and submit a report with specific suggestions to the Assembly.

8. In its final report, the Group of Experts recommended, inter alia, that eh statute of the Administrative Tribunal should be amended to give it jurisdiction to adjudicate financial claims submitted by the Secretary-General against staff members.[37] However, the Assembly has not acted on the report of the Group of Experts does not seem to have addressed the question of enforcement of judgements of the Tribunal by Member States, should this become necessary.

(ii) Criminal actions

9. In his report,[38] the Secretary-General also described the difficulties faced by the Organization in instituting criminal actions, as follows:

"20. The Secretary-General has on a number of occasions requested that national authorities investigate cases of alleged fraud against the United Nations, both by third parties and by former staff members. However, audit findings which lead to the dismissal of staff members are rarely supported by the type of evidence required under national law to secure criminal conviction, because the Secretary-General does not have the investigatory police powers needed to establish proof of guilt beyond reasonable doubt (such as subpoena power to obtain bank or financial records of the accused or his or her family, to obtain testimony on oath of witnesses, etc.) In addition, national authorities are often unwilling to undertake criminal action unless the amount of the fraud is significant.

"21. In general, a criminal action may be successfully pursued only if the former staff member or any possible outside accomplice is physically present, at the time of the action, within the jurisdiction where the crime was committed. This requires, of course, that the fraud be discovered by the Organization before the individual leaves the country.

"22. If the staff member concerned has left the jurisdiction where the fraud was committed before the prosecution commences, serious difficulties will arise because of the need for extradition of the accused. The laws of the extraditing State may prohibit extradition on a variety of grounds...Despite existing measures for international assistance and cooperation, the delays in extradition procedures usually are considerable.

"23. The courts of certain countries may entertain a prosecution even if the alleged crime was not committed within the jurisdiction (e.g., if the accused is residing within the jurisdiction). However, it will then be necessary to record evidence abroad or obtain the testimony of witnesses living in other countries. This can be a complex and time-consuming exercise that national authorities may be unwilling to undertake.

"24. In summary, effective criminal prosecution of those who defraud the United Nations requires the full cooperation of the Member States and, to be viable, it usually requires that the accused, or at least his or her accomplices, be physically present at the time the prosecution is initiated in the State where the fraud was committed."

10. There have been two occasions in recent years in which the Secretary-General has sought the assistance of national authorities at Headquarters to investigate cases of possible fraud by United Nations staff members or former staff members, one of which was successful.

11. Generally, the assistance of the local law enforcement authorities – obtained through the United States Mission – has been satisfactory in fraud and similar cases. No major problems have been encountered.

Conclusion

12. From the above, it can be seen that recovery of funds is facilitated if there is a criminal conviction since sentencing is normally influenced by restitution. If there is no criminal conviction, the Organization would have to prove the former staff member's indebtedness and this may be very difficult or costly, especially if the fraud occurred in a country separate from the country of residence of the former staff member.

14 August 1996

PROCUREMENT

24. LEGAL FORCE OF LETTER OF AWARD

Memorandum to the Audit and Management Consulting Division, Office of Internal Oversight Services

1. This is in response to your request for a legal opinion on whether a letter of award is an adequate basis for the provision of services. More specifically, you would like to know if a letter of award binds both parties in a contractual relationship, and if it does not, to what extent it binds, the parties.

2. In order to address your query, we must first outline the documents normally used in the Organization's procurement and contracting activities. These documents are the following:

(*a*) Invitation to bid (ITB) or request for proposal (RFP), which set forth the terms and conditions required by the Organization for the performance of specific services or the purchase of certain goods;

(*b*) Bid of proposal, which contains the conditions under which a potential contractor is willing to provide the required services or goods;

(*c*) Letter of award, which informs a potential contractor that its bid or proposal has been selected;

(*d*) Written contract or purchase order, which represents the definitive legally binding agreement between the Organization and the successful candidate in the bidding process and sets forth the terms and conditions under which the services will be performed or the goods purchased.[39]

3. The standard format of ITB and RFP used by the Organization contains clear language to indicate that it does not constitute an offer and that any bid or proposal will be regarded as an offer by the bidder or proposer and not as an acceptance of an offer made by eh Organization. The standard format of ITB or RFP further states that no contractual relationship will exist except pursuant to a written contract between the parties.[40] Thus, potential contractors participating in the bidding process are put on notice that eh procurement system of the Organization is designed to be a "process" which culminates with the conclusion of a written contract or a purchase order.

4. In this process, the letter of award is designed to be only a notification to the selected candidate that its bid or proposal has been evaluated and found acceptable by the Organization. The letter of award usually contains language making it clear that the "award" is contingent upon the satisfactory conclusion of a written contract. The letter of award, therefore, is not intended to create legal obligations between the parties, except imposing an obligation on the Organization to negotiate in good faith, with a view to concluding a formal contract with the successful bidder or proposer. The obligation to negotiate in good faith is, of course, a mutual obligation also imposed upon the other party.

5. We note that a letter of award could be worded so that it would be construed as an acceptance of the offer received. For instance, if the working making the "award" subject to the satisfactory conclusion of a contract were to be omitted, the letter of award might be construed as the Organization's acceptance of the bid or proposal.

6. If, however, services are rendered by the successful candidate with the Organization's consent (or if goods are delivered and accepted by the Organization) prior to the conclusion of a formal contract on the basis of the terms and conditions set forth in the RFP and the proposal or the ITB and the bid, as the case may be, the parties would in all likelihood be legally bound by such terms (even if a contract was never concluded or a dispute arose before a final contract was concluded). In such a situation, a tribunal would likely find that both parties had proceeded on the understanding that these terms would be incorporated into the formal contract. Discrepancies or gaps would then have to be filled in by the tribunal if the parties were unable to resolve them between themselves.

12 August 1996

COMMERCIAL ISSUES

25. USE OF THE UNITED NATIONS PREMISES – ARTICLES 104 AND 105 OF THE CHARTER OF THE UNITED NATIONS

Memorandum to the Director of the Buildings and Commercial Services Division

1. This refers to a proposal to establish a revenue-producing activity for the Organization by leasing the display showcases in the basement of the General Assembly building to commercial entities for advertising purposes.

2. We understand that the proposal, which is set out in a brochure untitled "A New Revenue Producing Opportunity" (the proposak) is as follows:

> The Organization will lease "display showcases" located in the public area of the basement of the General Assembly building to outside entities so that non United Nations entities, including commercial and private interests, might use the space for advertising purposes. It is envisaged that an advertising firm will be contracted "on a commission basis to handle the entire process, from soliciting prospective advertisers to preparing the art

work and billing invoices", and that all advertisements will be subject to approval by a committee consisting of representatives from various departments and offices of the Secretariat, in order to "ensure that the advertisements are not controversial, are tasteful, and consistent with the image and ideals of the United Nations."

3. For the reasons set out below, we consider that this advertising scheme requires specific legislative endorsement by the General Assembly.

Detailed reasons for opinion

A. FUNCTIONS AND PURPOSES OF THE ORGANIZATION

4. Articles 104 and 105 of the Charter of the United Nations provide as follows:

"Article 104

"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.

"Article 105

"1. 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.

"2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

"3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose."

5. On 13 February 1946, pursuant to Articles 104 and 105 of the Charter to the United Nations, the General Assembly adopted the Convention on the Privileges and Immunities of the United Nations (the Convention).

6. It is noted that there is no reference in either the Charter or the Convention to the United Nations engaging in commercial activities of the type envisaged in the proposal. Thus, it is far from clear that such an activity is an activity "necessary for the exercise of its functions and the fulfillment of its purposes".[41] It would of course be possible for the General Assembly to decide that placing commercial advertising at selected locations of the Headquarters district was essential to the fulfillment of the purposes of the United Nations, and if this were done, it would be clear that such an activity was a proper activity of the Organization and would be covered by the privileges and immunities of the United Nations.

B. Current guidelines on the use of United Nations premises

7. The current guidelines relating to the use of United Nations premises are consistent with the non-commercial use of its premises and are contained in administrative instruction ST/AI/416 of 26 April 1996. The instruction provides that the use of United Nations premises "must be consistent with the purpose and principles of the United Nations, and must be non-commercial in nature"[42] (emphasis added). This provision appears entirely consistent with the role envisaged for the United Nations in the Charter. It is further provided that "outside entities, including non-governmental organizations, may not hold meetings or events on United Nations premises to conduct their own organizational business or to advance their own purposes or aims"[43] (emphasis added).

8. In addition, administrative instruction ST/AI/376 of 1 June 1992, which contains the guidelines relating to exhibits on United Nations premises, provides that "United Nations facilities will be available to support substantive United Nations activities only...All exhibits must be compatible with the character, purposes and principles of the United Nations, in both content and presentation...Proposals honouring a specific individual, religion, country or non-governmental organization normally will not be permitted".[44] Again this is consistent with the functions and purposes of the Organization as envisaged in the Charter.

9. We also note that this basic philosophy of the United Nations not being involved in commercial advertising is reflected in the standard condition which the United Nations insists must be included in every contract that it concludes, i.e., the prohibition on contractors from advertising their association with the United Nations.

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

International Labour Organization

1. QUESTION WHETHER INTERNATIONAL LABOUR CONVENTIONS CAN BE ABROGATED AND BY WHICH MEANS (INSTITUTIONAL AMENDMENT)

Reports of the Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards of the Governing Body of the International Labour Office

Abrogation or extinguishment of international labour Conventions[45]

Introduction

The present document has been drafted to comply with the request made by the Working Party, after making a preliminary examination of the general document BG.264/LILS/WP/PRS/1 (para. 51-57), "to prepare...a paper concerning abrogation or extinguishment of some Conventions".

The subject matter of this request and the manner in which it is examined need a little explanation.

Abrogation or extinguishment of a Convention is used here to refer to the process enabling the legal effects of an instrument to be terminated.

There is no provision for such a process in the present standard-setting system of ILO; the body of standards is updated by the juxtaposition of the original text of the Convention and the revised text which continues to have some, if not all, of its legal effects. It has traditionally been acknowledged that this has several practical advantages – in particular that of not automatically releasing any parties from the revised Convention who might refuse to accept the obligations ensuing from a revising Convention from any obligation in the area covered.

However, as the body of standards has continued to grow, the coexistence of revised and revising instruments has accumulated disadvantages; and this has given rise to the question of whether the advantage of maintaining obligations, of which some are outdated, still justifies such an increase in complexity. Only an examination on a case-by-case basis could provide an answer to this question for a specific Convention. The present document does not set out in any way to pre-empt this case-by-case examination; it is merely trying to provide the Governing body, as requested, with the whole range of technical possibilities so that it might be able to choose, in full knowledge of the facts, the necessary course of action if, and only if, it concluded that there was a need to take action. The factors determining these courses of action are described in two parts. The first examines the reasons and implications of the fact that the ILO Conference, while having the power to adopt Conventions, does not have that of nullifying the legal effects. The second part envisages possible ways of remedying this situation.

Limits of the Organization's power to nullify the legal effects of Conventions if has adopted

(*a*) Legal theory behind these limits and practical consequences

The Conference very soon found itself faced with the need to remedy the shortcomings, failure or outdated nature of instruments it had adopted at its first sessions. But neither the Constitution nor the first ILO Conventions foresaw the possibility of amending them. However, given that nothing prevented the Conference from adopting a new Convention on a particular subject already covered, the question of what to do with the former Convention was raised.

This is not the place to review in detail the theoretical discussions to which this problem gave rise in the years 1928-1929. It should merely be recalled that the Conference's refusal to accept that it had the power to abrogate a revised Convention was based on an overall approach to the legal nature of these Conventions. According to this approach, initially put forward by the Legal Adviser, it was not possible to take the "quasi-legislative" character of international labour Conventions too far, although it was acknowledged to have "exercised a certain influence on the creation of the International Labour Organization".[46]

Once adopted, international labour Conventions took on a life of their own, independent to a great extent of the Conference which had given birth to them; indeed, because they had been ratified, they became an "actual contract between States" which the Conference had no authority to change.

However, another school of thought opposed this "contractual" approach, believing that Conventions should rather be considered as "conditional international laws"[47] whose ratification created first and foremost obligations towards the Organization. After a scholarly and in-depth discussion, the Governing Body and then the Conference tacitly came round to the first approach, for reasons that had as much to do with its practical repercussions as with its intrinsic merits.

What matters for the purposes of the present study is to understand that the practical consequences of this "contractual" approach are twofold. Not only does it prevent the Conference from directly altering the effects, in other words the obligations derived from the revised Convention, but it also restricts the Conference's prerogatives with respect to the Convention as the source of possible new obligations. This distinction needs to be explained.

Inability to alter the obligations created by the revised instrument

Under the reasoning of the contractual approach, the obligations ensuing from the ratification of a Convention cannot be nullified by the will of the Conference, but only by the will of the parties to the "contract", who may express this will in two ways:

— By denunciation, which can only occur at the time and under the conditions provided for under the Convention;

— By the ratification of a revising Convention, but only if the revised Convention had provided for the possibility and the revising Convention has decided on such termination.

Both these ways of proceeding are uncertain because although the Organization may encourage States to denounce a Convention to terminate obligations that it no longer considers contribute to any real progress (a rather clumsy, if not paradoxical, way of coping with the problem), it cannot oblige them to do this or remove the various obstacles or red tape that might stand in the way.

Limits on the Conference's power to dry up the source of future obligations

Even it all effects, i.e. the obligations created by a Convention, could be brought to an end at a given moment by the parties, this would not prevent the instrument from "being revived"[48] by new ratifications. Contractual theory nevertheless acknowledges that the Convention for the future by closing it to ratification. But this sterilization can only be as a result of a Convention which revises the Convention to be sterilized; and such a revision is not always possible for two sets of reasons:

— Reasons of a legal nature in the case of Conventions adopted before 1929 which do not contain a revision clause. Given that, according to the contractual approach, they became "the property of the States ratifying them", they are supposed to be completely outside the Conference's control and cannot therefore in principle even be closed to ratification. In order to circumvent this situation, the Minimum Age Convention, 1973 (No. 138), resorted to a very complex procedure, based on article 54 of the 1969 Vienna Convention on the Law of Treaties,[49] to ensure that Conventions on minimum age predating 1929 would be closed to ratification; under this procedure, the various Conventions relating to minimum age "shall be closed to further ratifica-

tion when all the parties thereto have consented to such closing by ratification of this Convention or by a declaration communicated to the Director-General" (article 10, para. 3);

— Reasons of a practical nature or expediency in so far as, even for Conventions adopted after 1929 which contain a revision clause, it might be unwise or inappropriate to proceed with revision because the fact that the original text is outdated might be attributed to its subject matter rather than its actual content (sometimes even to the fact that the Convention has fulfilled its objective), in which case a revision would have no sense. Two examples suffice to illustrate this point. The first arose recently with respect t to the proposed revision of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109). It was thought preferable, to avoid condemning the revising text to the same fate as the text it would revise, to limit it to the matter of hours of work and manning to refer the issue of wages to a Recommendation. The second example concerns specific Conventions applying to non-metropolitan territories (understood as colonies); their amendment by way of revision would be to no purpose.

The table enclosed in the appendix gives a clearer picture of the cumulative aspect of the problem. The section "left dormant" also reflects the adjustments that have had to be made in practice, the scope of which must be dealt with separately.

(*b*) Attempts to extend ways of dealings with outdated Conventions and their limitations: the solution of leaving "dormant"

It may be seen from the concepts described above that the legal effects of any Convention in force are in principle the following:

— First of all, the revised Convention, provided that it is not the subject of a Convention revising it and closing it to ratification, may continue to be ratified. As the enclosed table shows, this has occurred quite frequently even for Conventions left dormant, and not only in the event of succession of States;

— From a more basic standpoint, the Convention makes it compulsory for all parties to apply its provisions, failing which they are subject to constitutional procedures under article 24 or article 26 of the Constitution;

— Finally, it contains the obligation to report under article 22 of the Constitution.

This latter obligation is the one – the only one – which is subject to certain adjustments when a Convention is left dormant. In 1959, the Committee of Experts put forward the proposal that as article 22 only provided for an annual report and not necessarily an annual report on each Convention, reports should not be requested on all ratified Conventions every year. This left the "door wise open" for further adjustments in 1976 and 1993, which introduced a "periodicity of reporting" varying according to the importance attached to the Convention, while also allowing for reports to be requested outside such periodicity as well as exemptions (GB.258/LILS/6/1).

It may be observed from this that practical adjustments have this their limitations. First, they do not cancel the basic obligations derived from the instrument: secondly, although they might lessen on procedural obligations, this might be at the expense of an interpretation undermining the inviolability of constitutional obligations. It is therefore up to the Governing body to examine whether, in cases when the Organization has truly reached the conclusion that the obligations deriving from a given Convention no longer have any real influence on social progress, it might not be preferable from the standpoint of the credibility and clarity of the standard-setting system, to be able to take all the steps that follow from that conclusion. It must of course be considered whether this involves resorting to measures which are out of proportion to the actual problem in hand. This matter is examined below.

Possible solutions

The first part of the present report has shown that within the framework of the contractual approach, the legal effects of a Convention can only be totally eliminated by a combination of two actions: one is the "sterilization" of the Convention, which must necessarily take the form of a revision, to render the Convention inoperative as a source of future obligations; the other action is to nullify the existing effects through denunciation of the Convention or ratification of a revising one.

It might of course be ventured that the simplest way of addressing the complications and vicissitudes of this dual operation would be to review and perhaps replace the "contractual" approach, which is the cause of this operation, by the "quasi-legislative" approach already advocated before the Second World War, with weighty arguments to recommend it. Such a course would however be neither desirable nor realistic particularly given that the role of the Governing Body is not to decide between various legal theories. This having been said, two approaches might logically be envisaged; that of adjusting more efficiently the measures available to deal separately with the Convention and its effects; and that of delegating power to the Conference, which, without taking a position in favour of one or other theory, would allow the Conference to deal simultaneously with the source and the effects referred to.

(*a*) Adjustment of measures to nullify the effects and source separately in the case of outdated Conventions

With respect to the effects, by stepping up the "exit" procedure in force

It seems scarcely feasible to change the principle whereby only parties to a Convention can cancel the effects of their ratification by denouncing the Convention, or whenever possible, by ratifying the Convention revising; but it might be possible to speed up the procedure at least on a point of detail. A Convention for which the number of ratifications has fallen below the necessary number for its entry into force (two for all the non-maritime Conventions) is still considered to be in force. However, this situation seems to be the result of an oversight. Article 55 of the 1969 Vienna Convention on the Law of Treaties does indeed provide that "unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number

necessary for its entry into force", but this text reflects the practice of multilateral treaties, which generally require a large number of ratifications to enter into force; it certainly does not envisage the case when the required number being two as for international labour Conventions the lower number is one and the application of the rule would lead to a situation which was in accordance with neither the usual interpretation of the term "Convention" nor the contractual theory itself, which implies at least two parties. Consequently, nothing would prevent the Conference from confirming that a Convention ceases to be in force when the number of ratifications falls below that prescribed for its entry into force.

By varying the methods of "sterilization" of the Convention as a source of obligations

According to current theory and practice, this sterilization is only possible, as seen above, by means of (*a*) a revising Convention and then (*b*) only with respect to Conventions adopted after 1928. It was only from that date onwards that Conventions contained a standard revision clause. The question might have been raised – and there was no shortage of people opposing the contractual approach – as to how this revising clause could authorize the Conference to close the revised Convention to ratification while, under the reasoning inherent in this approach, the parties were supposed to become "owners" of the Convention. However, if the view is taken that the standard revision clause is tantamount to an advance delegation given by the ratifying States to the Conference of the power to change the content of their rights, there is no contradiction. Be that as it may, the matter raises two questions which affect the possibility of relaxing or making more flexible the constraints of this theory.

First, it is worth bearing in mind that, without detracting from the "contractual" theory and practice, it is highly questionable to conclude that Conventions are the "property" of the parties. The fact that the ratification of a Convention creates rights and obligations between them does not mean that they become owners and can demand that the instrument be kept open with a view to further ratifications whatever the Organization's opinion as to its actual utility. What is more, the approach seems to take scant account of the fact that membership of the Organization is a prerequisite for adhering to an international labour Convention, thus implying rather that the Convention can have no effect outside the fold – and therefore independent of the will – of the Organization. Finally, there is nothing in the general law of treaties to suggest that a Convention must be maintained, particularly since the 1969 Vienna Convention on the Law of the Treaties, which may apply also to treaties adopted within an international organization, stipulates that it is without prejudice to any relevant rules of the organization.

While continuing to consider that obligations deriving from a Convention remain, in spite of its revision, outside the control of the Conference, it would therefore seem perfectly acceptable that the Conference acknowledge that it has the right to decide by an acte contraire i.e. an instrument to undo what it has done, adopted in conformity with the established procedures and majority requirement, that a Convention is no longer apt to serve as a basis for new obligations. This decision to abrogate for the future would be tantamount to instructing the Director-General not to register any new ratifications of this Convention. It would also settle the case of Conventions predating 1929 considered obsolete which, according to current doctrine, are doomed to be self-perpetuating.

If the Working Party is not prepared to accept this conceptual aggiornamento of limited scope, it could, at least for Conventions after 1928 ensure that they are neutralized while strictly adhering to the "contractual" approach, through a "killer Convention". This would be a revising Convention limited to closing eh revised Convention to further ratifications, without replacing any of substantive provisions. This "killer Convention" (which could, as the case might be, cover several Conventions at once) would enter into force under the same conditions as other Conventions (two ratifications) and, similar to any other revising Convention, would also close the revised Convention to further ratifications.

(*b*) Solutions for simultaneously nullifying the obligations under a Convention and their source

A Convention-related solution

In the current constitutional set-up, an operation of this nature is, for the reasons given above, impossible in the case of Conventions in force. However, it would be perfectly feasible for future Conventions on the basis of an additional final clause stipulating as in the case of revision, that States, when ratifying the instrument, would agree in advance to the Conference having the power to abrogate, for the future as for the past, the effects of the Convention. Indeed, given that States party to a Convention may agree that the Conference has the right to change the alleged property rights ensuing from ratification there is no reason why they should not a fortiori delegate to the Conference in advance the authority of releasing them from the Convention under a specific clause to this effect. Moreover, this theoretical possibility was expressly brought up in the discussion before the War.[50] This suggestion was not taken up merely because at the time the practical advantages of retaining the former Convention seemed to outweigh the disadvantage. Looking back, this decision seems even more regrettable given that such a clause would have been limited to enabling the Conference to proceed with such an abrogation after a case-by-case analysis; it would have in no way implied the automatic abrogation of the revised Convention by the mere fact of its revision. In other words, by failing to go ahead with this idea, the Conference deprived itself of the possibility, which it might find extremely useful today, of canceling all the legal effects of a Convention in cases where it concludes that the Convention had failed to attain its objective or, on the contrary, that it had fully attained that objective.

Abrogation on the basis of a new constitutional provision

The only way to cancel both the effects and cause at the same time – existing Conventions as well as future Conventions – would be to authorize the Conference to do so by amending the ILO Constitution. This solution is far less drastic than might seem at first.

From the technical and political standpoint, this solution might appear a considerable task because, according to article 36 of the present Constitution, it would require a majority of two thirds of the votes cast by the delegates at the Conference for its adoption, as well as a majority of two thirds of ratification including those of five of 10 Members of chief industrial importance. The general impression that these conditions would be almost impossible to meet is based on experi-

ences which, however, are completely unrelated and occurred in an entirely different context. In the case in point, the amendment would not aim at restricting rights or increasing obligations; it would rather create the possibility of all members to extricate themselves from the obligations deriving from ratified Conventions without having to go through all the manoeuvres and vicissituedes of denunciations at the Organization's instigation or of "killer Conventions". If the Conference embarked on this course, the Office could regularly ensure the follow-up by carrying out appropriate ratification campaigns at certain intervals.

From the legal standpoint, this solution would make it possible to circumvent the obstacles inherent in the contractual approach without, however, having to give it up. In fact, the contractual approach was only able to prevail because the Constitution as indeed the Conventions themselves, was silent as to the Conference's possibility of abrogating instruments. If this gap were to be filled, it would also lose its raison d'etre.

If the fear of carrying out a sort of retroactive "expropriation" makes the Conference hesitate to accept that it has such a power with respect to Conventions already adopted and in force, it could easily assuage these misgivings by adopting an "opting –out" clause giving the States parties to the Convention the possibility of remaining bound by the instruments provided that they express their wishes to this effect within a specific time limit after the decision to abrogate. In a nutshell, such an amendment could, for instance, provide that: "With respect to a specific item included in its agenda under the conditions provided for by this Constitution, the Conference may, by a decision adopted by a majority of two thirds of the delegates present, abrogate any Convention, including the obligations it has created for all the Members having ratified it, with the exception of those Members which, within 12 months from the date of abrogation, shall have informed the Director-General of their wish to remain bound by the Convention." (A drawback in having such a clause is that it might be tantamount to indirectly and gratuitously consecrating the "contractual" approach in the Constitution.)

When making an overall assessment of the merits as well as the difficulties inherent in this constitutional approach, it is important to bear in mind the symbolic value that the power conferred on the Conference would have on the image of international labour Conventions; they would cease to seem a mere juxtaposition of more or less disparate treaties and be viewed as a real body of international labour "legislation".

12 February 1996

Possible amendments to the Constitution and Conference Standing Orders to enable the Conference to abrogate or otherwise terminate obsolete international labour Conventions[51]

Introduction

At the 261st session of the Governing Body, the Working Party on Policy regarding the Revision of Standards, on the basis of an Office document, examined the legal problems posed by the abrogation or termination of international labour Conventions considered obsolete and the possible methods of procedure.

Of the various policy options which had been presented to resolve these problems without disrupting the long-established constitutional practice of the Organization, the Working Party expressed its preference in principle for the solution of a constitutional amendment authorizing the Conference to proceed to such an abrogation, since this appeared to be both the most correct from the legal point of view and the most effective.[52] When they entrusted the Office with drawing up more specific proposals with a view to such an amendment, however, members on various sides expressed the concern that the proposed amendment should be accompanied by a number of guarantees (the need for which, moreover, had already been mentioned in the Office document) so that the abrogation of a Convention could occur only at the end of a carefully considered process, and to ensure that it benefited from the broadest possible support.

The proposals indicated below have been drafted to give effect to this policy agreement with account being taken of these concerns. They are grouped around three points: the purpose and scope of the constitutional amendment; the procedure for its application (and the implementation of the abrogation itself); the proposed texts as they result from an analysis of the two preceding points.

Purpose and scope of the constitutional amendment

As appears form the preceding document, proposed constitutional amendment does not seek as such to abrogate Conventions which have become or are recognized as obsolete; it simply seeks to authorize the Conference to proceed to such abrogation in cases in which it considers appropriate. The precise purpose of this amendment (i.e. the Conventions to which the abrogation could be applied) as well as the scope of its effects should, however be carefully indicated.

(*a*) Concerning the purpose of the abrogation: instruments recognized as obsolete

Conventions in force and Conventions not in force

Under the term "abrogation" the constitutional practice of the Organization and the previous documents on the subject have tended to lump together the abolition of all Conventions considered as obsolete, whether or not they are in force. Although the Constitution does not make such a distinction or, more exactly, does not say anything about the conditions of entry into force of Conventions (these conditions appear in the final provisions of Conventions), the situation is not at all the same in each case. Beyond the obligation of placing an instrument before the competent authority, a Convention which has not come into force does not create legal obligations either with regard to other member States or to the Organization itself. If it is not closed to ratifications, it most specific legal effect is that it may receive other ratifications (even if such ratifications have been discouraged, the Director-General does not, however, have the power to refuse them) and thus enter into force at any time.

The fact that a Convention is meant to enter into force exists, however, only through the will of the Conference, expressed in the final clauses of the Convention. This is why, even within the framework of the orthodox contractual doctrine of the pre-war period, it had been noted that the Conference could,

by an acte contraire, decide to withdraw a Convention from further ratification if, in the absence of the required number of ratifications, it would not or no longer result in obligations between States.[53]

If is clear that if a constitutional amendment which authorizes the Conference to abrogate Conventions in force is adopted, this pint will no longer have any importance at all since it would be subsumed by such an amendment. It would, however, be regrettable if the impression were inadvertently given that this amendment is also necessary to authorize the Conference to withdraw Conventions which have not entered into force, in particular if the constitutional amendment in question took a long time to come into effect. This is why it seems timely to indicate in an appropriate manner that this amendment does not in any way prejudice the power of the Conference to close to any further ratification a Convention which has not come into force and to thus cancel that Convention's capacity to produce its legal effects. Since the concept of coming into force does not appear in the Constitution, it would seem preferable to establish an appropriate distinction between abrogation and withdrawal in the Standing Orders.

Conventions recognized as obsolete

To meet the concern expressed during the preliminary discussion, the amendment should be conceived in such a way that the attribution to the Conference of the power to abrogate Conventions in force does not appear as discretionary, but strictly limited to obsolete Conventions. To reflect more specifically this idea, it would appear useful to stipulate that the amendment should concern Conventions which have lost their purpose (including cases in which their objective had been fully met) or which no longer contribute to promoting the goals of the Organization. Furthermore, it must be perfectly clear that this evaluation should be made for each Convention taken separately. This matter will be examined in more detail in the discussion on procedure.

Recommendations

There has been a tendency so far to set aside this question since as Recommendations do not create an obligation in the strict sense for either States or the Organization (since the supervisory machinery is not applicable and article 19.6(*d*) is discretionary), their obsolescence does not have any practical consequences. However, once the problem of the abrogation of Conventions is examined, it is no longer possible to avoid raising the question of obsolete Recommendations. Within the logic of the considerations set forth in document GB.265/LILS/WP/PRS/2 as well as those given above, it may however be considered that a constitutional amendment is not necessary for this purpose, since the Recommendation does not create any obligations between States, and a simple acte contraire would be sufficient to withdraw it if it became obsolete. This process could thus be regulated in the Standing Orders.

(*b*) As regards effects: The possibility and limits of a "contracting out" clause

The question as outlined in the preceding document concerns whether the amendment may or should cancel the obligations created by the Convention even for members which wanted to remain bound by it or whether at least pro-

vision should be made for a "contracting out" clause for such members. A related concern was expressed concerning the question of whether to some extent such an abrogation would not infringe the will of national parliaments (or other competent authorities in the matter) which have made the very positive effort of giving their approval to the ratification act.

Even if a large majority seemed at any event to favour a full abrogation power without any "contracting out" clause, it would appear useful to introduce a distinction between the effects of abrogation between the parties bound by the Convention and its effects with regard to the Organization. This distinction would seem to be able to satisfy the concerns expressed and allow the widest possible consensus to be achieved.

The full abrogation of the Convention could be seen as covering two elements: the abrogation of the Convention as an international labour Convention comprising, under the Constitution, certain machinery for its application, and the abrogation of substantial obligations created by the Convention, including the parties which wish inter se to remain bound by it.

Now it must be clear in this respect that there is nothing in treaty law which allows ILO, even through recourse to a constitutional amendment, to prevent States parties to a Convention which wish to remain bound inter se by the obligations resulting from this Convention to decide to do so. It must also be clear that the abrogation of the Convention is not at all supposed to affect the national legislation which gives it effect if the member does claim in this respect the rights granted under the Constitution in its current wording, and to participate with all other members in the adoption of a constitutional amendment to alter these procedures.

In the light of this distinction between the two kinds of procedure, it may now be possible to determine in a manner which is more easily acceptable to members as a whole the purpose and content of the "contracting out" clause, the purpose of which would not be one of purely and simply maintaining abrogated Conventions for members which wish to remain bound by them, but to stipulate that the abrogation of a given Convention would not prevent those States which formally expressed the desire to do so to remain bound inter se by the obligations resulting from this Convention without its application mechanism. Such a solution would, it is import to emphasize, be very close to that already provided by article 21 of the Constitution, whereby if any Convention fails to secure the support of a two-thirds majority, any of the States accepting it may agree "to such Convention" among themselves; in this case, the Director-General shall merely transmit the Convention thus concluded for registration to the Secretary-General. Thus, it can be said that the situation in which a Convention is abrogated, insofar as this means that the Convention no longer has the support of two thirds of the Conference, is not unlike that in which a Convention does not achieve the majority of two thirds of the votes of the Conference for its adoption.

(*c*) As regards the conditions for the adoption and entry into force of the amendment: alternative standard clause

If the Working Party confirms its interest in the solution of a constitutional amendment, it should at the appropriate time recommend the Committee to propose to the Governing Body to place the matter on the Conference agenda.

It goes without saying that the conditions for the adoption of the amendment instrument by the Conference and its entry into force will be those prescribed by article 36 of the Constitution, respectively at the time of the said adoption and when, and the said adoption, the threshold(s) required by the article for entry into force is reached.

As indicated in the document previously placed before the Working Party, these conditions should not, given the purpose of the amendment and provided that it is supported by an appropriate campaign, create insurmountable problems. It may however be asked whether, as a measure of precaution, it might not be appropriate to provide all Conventions adopted in the further (following the adoption of the amendment instrument and until its entry into force) with a clause authorizing the Conference to abrogate them. This clause would provide a kind of insurance against the risk of future Conventions lengthening the list of Conventions which have become obsolete and yet which have remained in force in the – rather unlikely – event that the amendment did not prosper. This standard clause could reflect in substance the elements of the procedure applicable within the framework of the constitutional amendment. For information purposes an example is given in the appendix.

Procedures and methods for applying the power of abrogation

The guarantees required by the Working Party may be sought at two levels: that of procedure and that of the majorities required for abrogation.

(*a*) Procedure

It appears from the document, as well as its discussion, that there is broad agreement on the idea that the abrogation of a Convention is an act as serious and important as its adoption and that it should not be decided lightly; it must be inspired by the principle of the parallelism of forms and procedures. This has a number of specific consequences.

First, the act of abrogation must be individualized (even if it is, of course, conceivable that several Conventions could be grouped together within the same abrogation process). This means that for each Convention the abrogation of which is being envisaged, the Governing Body must, as in the case of a new Convention, decide whether the matter should be placed on the Conference agenda on the basis of an Office report, which would be the equivalent of the "law and practice" report for a new Convention.

Once the obsolete nature has been recognized, the Governing Body should proceed to the placing of the item on the Conference agenda and the Offices should prepare a report based, as for the adoption of a new Conventions, on consultations with all members as well as a proposal for discussion and decision; since there would be no need to weigh carefully the content of the proposed provisions one after the other, but to confirm the obsolete nature of a text as a whole, the discussion procedure of the report and propsal could take the form of a simplified version of the single-discussion procedure, it being understood that the Conference could make use, much more so than in the case of adoption of the option to proceed directly to a plenary examination of the question, without sending it to a technical committee.

To apply this procedure, it would be necessary to complete the relevant provisions of the Standing Orders of the Governing Body and of the Conference Standing Orders. As regards the latter, these additional provisions could logically be placed after the specific provisions (articles 44 and 45) concerning the revision of Conventions and Recommendations in a new article, which could be entitled "Abrogation and withdrawal of Conventions and Recommendations".

It should be emphasized in this respect that the withdrawal of a Convention which has not come into force would follow the same procedure, the only difference being, as noted above, that legally the Conference would not need any constitutional authority to proceed. As a simple solution to the problem mentioned in the first part, it would be sufficient for the Conference, by adopting the corresponding amendments in part III, to note that as regards abrogation, this amendment will take effect only at the time of entry into force of the constitutional amendment authorizing the Conference to proceed.

(*b*) Required majorities

In order to strengthen the guarantee that abrogation decisions will not be taken lightly, the Working Party has discussed the possibility, mentioned in the previous document, of providing for a conditional majority, or even consensus; this concern reflects the quite legitimate desire (even if it may at first sight seem theoreticak) to prevent a Convention being abrogated against the unanimous opinion of a group. This desire may however be perfectly taken into account without affecting the constitutional provisions and the very delicate balance which they establish concerning important decisions. This system combines the requirement of a two-thirds majority with the equally very important requirement of a record vote.

While abrogation is an act as serious as that of adoption, it is not a more serious act, and subject to what is proposed in the following paragraph, there does not seem in the end to be any reason to require a conditional majority. Furthermore, since it is a serious act, each government and non-government delegate must be committed individually. This is why it appears important to maintain the record vote rather than the anonymous system of consensus during the final vote at the Conference.

That being said, the legitimate desire to prevent the possibility of a coalition of two groups proceeding to abrogation against the desire of the third may and must be taken into account. The simplest and most economic means of doing so and one which would be most consistent with the constitutional balance mentioned above would be to introduce this guarantee of consensus at the upstream stage, i.e. when the Governing Body must decide to place the matter on the Conference agenda.

The Standing Orders of the Governing Body stipulate that when the Governing Body discusses for the first time the inclusion of an item on the Conference agenda, it cannot, "without the unanimous support of the members present, take a decision until the following session". It could be stipulated in a new provision, which would follow the current article 12, that when the matter on the agenda concerns the abrogation of a Convention, the decision should as far as possible have to be taken by consensus or, failing that (during the second

discussion of the proposal), by a three-quarters majority of the members of the Governing Body with the right to vote. This formula would seem preferable to that of a pure and simple consensus; it would encourage without the risk of the latter becoming a veto.

8 October 1996

2. INTERNATIONAL LEGAL STATUS OF THE INTERNATIONAL SERVICE FOR NATIONAL AGRICULTURE RESEARCH FOR THE PURPOSES OF ARTICLE III, PARAGRAPH 5, OF THE STATUE OF THE ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANIZATION

Note to the Programme, Financial and Administrative Committee of the Governing Body of the International Labour Office[53]

By a letter dated 29 November 1995, the Director-General of the International Service for National Agriculture Research (ISNAR) notified ILO of the recognition by ISNAR of the jurisdiction of the Administrative Tribunal of ILO, in accordance with article II, paragraph 5, of the Tribunal's Statute.

Under its Statute, the Tribunal is competent to hear complains against any other intergovernmental organization approved by the ILO Governing Body which recognizes the Tribunal's jurisdiction and Rules of Procedure.

ISNAR was established by a Memorandum of Understanding, dated 31 October 1979, between an intergovernmental organization and a subsidiary body of the United Nations, the International Bank for Reconstruction and Development and the United Nations Development Programme. Under the Memorandum, ISNAR forms an integral part of (Consultative Group on International Agricultural Research (CGIAR) system, whose members comprise 34 States, four foundations and 11 international and regional organizations. Its purpose is to promote the development and strengthening of national agricultural research capacities in developing countries. Its principal organs are Board of Trustees, consisting of one member appointed by the host country, four members appointed by the CGIAR after consultation with the Board, eight members elected by the Board, having regard to certain criteria, and the Director-General as a member ex officio; and the Director-General. According to the Constitution, the members of the former, except the Director-General, serve in their a personal capacity and are not considered, nor do they act, as official representatives of Governments or organizations. On 2 June 1980, the organization concluded a Headquarters Agreement with the Netherlands, an international treaty registered with the United Nations, recognizing its juridical personality and, as it does for its staff, the privileges and immunities normally recognized for intergovernmental organizations and their staff. It is expected to employ some 95 officials.

Given the above-mentioned special institutional features ISNAR (the composition of its Board of Trustees and the fact that is was established by an "inter-organizational" agreement), the Office has sought additional information from

the Legal Adviser of the Foreign Ministry of the host country in order to ascertain that it could be considered as an organization under public international law which meets the requirements of the Tribunal's Statue. The categorical reply was that ISNAR does indeed possess full international juridical personality and that the host country considers it to be an "intergovernmental organization" within the meaning of the Statue of the Administrative Tribunal.

In view of the commonly accepted meaning of the term "intergovernmental organization", as opposed to organizations established by economic integration agreements, as referring to organizations set up by an agreement concluded among States and in which "decision-making powers are in fact exercised by representatives of Governments" (H.G. Schermers and N. Blokka, International Institutional Law (The Hague, Nijhoff, 1995), para. 59.), the latter affirmation, even if it is made by the authority which, a priori, is most competent to express an opinion on the matter, cannot be accepted without first clarifying certain points in the light of the origin and raison d'etre of the above-mentioned provision of the Tribunal's Statute, since the present case could become a precedent, given the likelihood of such atypical models of International organizations proliferating in the future.

Access to the Administrative Tribunal of ILO was introduced for intergovernmental organizations other than the ILO following a specific request by WHO in 1949, two years after the International Labour Conference accepted the "legacy" of the Administrative Tribunal of the League of Nations. The preparatory work does not shed any particular light on what was meant by the expression "intergovernmental organization" ("organization interetatique" in French). However, in the light of subsequent practice, two considerations would seem to be particularly relevant in clarifying the intended meaning.

First, ILO tacitly agreed – and this was to a certain extent consistent with its calling as perceived by other organizations – to take on the role of a sort of international public service dispensing international administrative justice for organizations and their officials which, because of their own status, had no other way of settling their disputes, in particular before national jurisdictions. It should be pointed out in this respect that the Governing Body accepted one organization (Interpok) whose intergovernmental character was the subject of some debate and had to be verified at the time by referring the matter to the Legal Counsel of the United Nations.

Second, as a corollary, these organizations provide sufficient guarantees of reliability and dependability to ensure that the decisions handed down are properly enforced. Seen from this viewpoint, the concept of an intergovernmental organization as it is traditionally understood, i.e. to mean an organization composed of States, takes on a special meaning in so far as it provides such guarantees in principle (even if they are not always absolute, as was unfortunately clear from the way in which the last judgement of the Tribunal of the League of Nations in the Mayras case was handled).

It would appear to be possible, however, to reconcile these considerations without initiating the procedure for the amendment by the Conference of the Tribunal's Statue in order to clarify the situation. When ISNAR was established on its territory, the host State made sure in the Headquarters Agreement that, on one hand (article 19), any disputes arising out of the contracts concluded by ISNAR would be submitted to arbitration and, on the other (article 17), that

ISNAR would cooperate with the authorities of the host State in order to facilitate the proper administration of justice. In the light of its recent consultations with eh host State, the Office is of the opinion that these commitments, coupled with the host country's affirmation of the intergovernmental nature of the organization in question, appear to provide sufficient guarantees, even if they are not those that would arise out of a more classic intergovernmental structure. In the unlikely event that difficulties might arise in enforcement, nothing would prevent the Office or the complainant form referring the case to the authorities of the host country with a view to applying article 17 mentioned above in respect of a judgement handed down by the Administrative Tribunal of ILO, in the same way as any other applicable judicial decision.

6 November 1996

3. PARTICIPATION OF THE SPECIAL ADMINISTRATIVE REGION OF HONG KONG IN ILO ACTIVITIES – APPLICATION OF ILO CONVENTIONS AND RECOMMENDATIONS TO HONG KONG SAR

In reply to your request, I should like to refer to previous correspondence to the Government (bearing the dates of 27 March 1996, 15 June 1995 and 21 April 1995), as well as to the exchange of communications published in the Official Bulletin of ILO in 1990 (vol. LXXIII, Series A, No. 1). These include the Declaration of the Government of the People's Republic of China communicated on 1 September 1989, which was notified to the States member of ILO.

The most immediate question concerns the participation of Hong Kong SAR in the Asian Regional Meeting that is to be held in the second half of 1997. As you know, the draft Standing Orders for the new regional meetings, which the Committee on Legal Issues and International Labour Standards has referred for approval by the Governing Body, contain a provision on the composition of regional meetings which is identical to the one governing the composition of regional conferences; both provide for "two Government delegates, one Employers' delegate and one Workers' delegate for each State or territory invited by the Governing Body of the International Labour Organization to be represented" at the meeting. In relation to this, the Declaration of the Government of China referred to the continuation of the participation of the Hong Kong Special Administrative Region in International Labour Organization activities. As I think we had occasion to explain orally to the Chinese delegation, the practice has been in the past, and in particular at the Eleventh Asian Regional Conference (Bangkok, 26 November – 2 December 1991), that a tripartite delegation from Hong Kong, invited through the Government of the United Kingdom (which itself had no delegation), attended. A copy of the pertinent page form the Final List of Members of Delegations from that event is enclosed for reference. As indicated in earlier correspondence, the tripartite delegation form Hong Kong has been included within the United Kingdom delegation to the International Labour Conference. Since the Declaration states that, "With effect from 1 July 1997 the Hong Kong Special Administrative Region, as an inseparable part of the territory of the People's Republic of China, will not be and should not be

deemed to be a 'Non-Metropolitan Territory'", the Office will be issuing an invitation to the Government of China. It would then be up to the Government, in the light of the exchange of communications which appeared in the Official Bulletin, to take steps regarding the participation of a tripartite delegation from Hong Kong SAR, within its delegation to the Asian Regional Meeting and sessions of the International Labour Conference in accordance with this exchange.

The second matter raised concerns government reports regarding the application of Conventions and Recommendations to Hong Kong SAR. The Declaration refers in this regard to continuing to have international labour Conventions applied to the Hong Kong Special Administrative Region and for this purpose having the relevant articles of the Constitution of the International Labour Organization applied, by analogy, to it. In the light of the Government's Declaration as regards the status of the Hong Kong Special Administrative Region as from 1 July 1997, any comments which might be made by the Committee of Experts on the Application of Conventions and Recommendations in relation to the application of Conventions in Hong Kong SAR for a period after 1 July 1997 would appear under "China" in section I of part two of the Committee's report to the International Labour Conference, with an appropriate footnote referring to the above-mentioned Official Bulletin. In its letter 27March 1996, the Office provided the Government of China with a list of the Conventions that had been declared applicable to Hong Kong by the Government of the United Kingdom.

21 November 1996

NOTES

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

[2] ICJ Reports, 1989, Applicability of article VI, section 22 of the Convention on the Privileges and Immunities of the United Nations, para. 52.

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

[4] Ibid., vol. 1, p. 15.

[5] "Executing agency" is defined in UNDP financial regulation 2.1(h) to mean an entity to which the Administrator (of UNDP) has entrusted the overall management, by national government authorities or by a United Nations agency, of a programme/project, along with the assumption of responsibility and accountability for the production of outputs, achievement of programme/project and for the use of UNDP resources.

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

[7] See also Report of the Secretary-General on the review of the efficiency of the administrative and financial functioning of the United Nations, "(A/C.5/47/88).

[8] An "implementing agency", if other than the executing agency, shall mean an entity engaged by an executing agent and accountable to the executing agency to procure programme/project outputs (UNDP financial regulation 2.1 (*i*)).

[9] "Agency support cost" shall mean the expenses incurred by an executing agency as a result of its administration of programme activities financed from UNDP funds (UNDP financial regulation 2.1.A. (*i*)).

[10] TD/63/Rev. 2

[11] See A/50/684, para. 19.

[12] See the report of the Secretary-General on the "effective planning, budgeting and administration of peacekeeping operations (A/48/945 (Coor.1) and, para. 67; see also A/46/185, para. 13.

[13] See A/45/594, para. 47 (*b*). For the purpose of ensuring that the immunity of the contingent personnel from the criminal jurisdiction of the host State does not result in a jurisdictional vacuum, the bilateral agreement between the United Nations and the troop-contributing country ensures that the latter is prepared to exercise this jurisdiction as to any crime or offence with might be committed by a member of its military contingent. See A/46/185, paras. 24 and 25; see also A/3943, para. 136.

[14] A/46/634/Rev. 1.

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

[16] Ibid., vol. 993, p. 3.

[17] Ibid., vol. 1, p. 15.

[18] ICJ Reports, 1989, Applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion of 15 December 1989, para. 55.

[19] Official Records of the General Assembly, Sixth Session, Annexes, agenda item 41, document A/C.5/L.172, para. 13.

[20] See report of the Secretary-General dated on 8 December 1995 reform of the procedure for determining reimbursement to Member States for contingent-owned equipment (A/50/807) of, para. 22.

[21] See Appleman, J.A., Insurance Law and Practice, vol. 4, rev. ed. (St. Paul, Minn., 1969) sect. 2123, p. 35.

[22] Ibid, sect. 2213, p. 135 and sect. 2211, p. 128.

[23] See report of the Advisory Committee on Administrative and Budgetary Questions dated 7 November (A/41/7/Add. 6), recommending adoption of the self-insurance programme; see also General Assembly resolution 41/209 of 11 December 1986, confirming the recommendations of the Advisory to adopt the self-insurance programme.

[24] General Assembly resolution 1219 (XII) of 14 December 1957, entitled Financing of economic development."

[25] The Expanded Programme, on the other hand, was only authorized to receive government contributions (see, e.g., Economic and Social resolution 222 (IX) of 14 August 1949 (paras. 8 and 9), approved by the General Assembly in its resolution 304 (IV) of 16 November 1949).

[26] The present organizational structure and activities of UNDP are defined in General Assembly resolution 2688 (XXV), of 11 December 1970. In that resolution, the Special Fund and Technical Assistance components of the programme were completely merged (see, e.g., para. 13).

[27] See also General Assembly resolution 37/226 of 20 December 1982 on the "Operational activities for development of the United Nations system".

[28] The word "contributions" in this rule is used in the general sense and should be understood to mean a contribution in the form of a donation as provided in regulations 4.14 and 4.16.

[29] See, e.g., UNDP Governing Council decision 88/36, para. 22.

[30] Appendix B provides that staff at Headquarters who give up permanent resident status are entitled "to such of the allowances and benefits stipulated in rule 104.7" form such time as the non-immigrant status is acquired. This does not clearly indicate what is to be done in the case of a staff member who gives up non-immigrant status and acquires permanent residency status.

[31] In its resolution 49/241, the General Assembly also decided that it would "re-examine the issue of entitlement to repatriation grant and other expatriate benefits to staff members living in their home country while stationed at duty stations located in another country, in the light of the report by the International Civil Service Commission requested in section IID of [Assembly] resolution 48/224".

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

[33] The Secretary-General, in the case of UNICEF, delegated this authority to the Executive Director.

[34] The rationale behind engaging personnel under SSAs is the need for their expertise by the Organization and the temporary character of their services. In the case of UNICEF, the current administrative rules governing all types of SSAs are set out in UNICEF administrative instruction CF/AI/1991-11 of 23 December 1991. The SSAs explicitly set out that the legal status of experts on mission is that of independent contractors and cannot be considered in any respect as being staff members and employees of the United Nations, or UNICEF as the case may be.

[35] It is to be noted that the clause entitled "Legal status" of the UNICEF General Conditions for Contractors, which should be attached as part of the contract with any contractor, reads as follows: "The Contractors shall be considered as having the legal status of an independent Contractor vis-à-vis UNICEF. The contractor's personnel and subcontractors shall not be considered in any respect as being the employees or agents of UNICEF."

[36] By the resolution, the General Assembly requested the Secretary-General to make proposals to the Assembly on: (*a*) establishing legal and effective mechanisms to obtain recovery of misappropriated funds as recommended in paragraph 53 of the report of the Advisory Committee on Administrative and Budgetary Questions; and (*b*) seeking criminal prosecution of those who had committed fraud against the Organization.

[37] A/49/418, para. 32 (*d*).

[38] A/48/572.

[39] Although contracts also could be entered into "orally", we consider only contracts in written form. In this connection, we note that financial rule 110.22 requires that contracts and purchase orders for US $2,500 or more from single contractor be in writing.

[40] The Organization usually includes a provision in the RFP authorizing the United Nations to alter the conditions set forth in the RFP at any time during the procurement process. We do no address the enforceability of that provision in the present response.

[41] Charter of the United Nations, Article 104.

[42] ST/AI/416, para. 7

[43] Ibid, para. 11.

[44] ST/AI/376, para. 2.

[45] GB.265/LILS/WP/PRS/2.

[46] ILO, International Labour Conference, Twelfth Session, Geneva, 1929, vol. I, part III (annexes), pp. 733-734.

[47] Ibid., p. 763.

[48] According to the expression used by Mr. Morellet. See ILO; International Labour Conference, Twelfth Session, Geneva, 1929, vol. 1, part III (annexes). p. 743.

[49] United Nations, Treaty Series, vol. 1155, p. 331.

[50] See in this respect the Office proposals in ILO, International Labour Conference, Twelfth Session Geneva, 1929, vol. I, (annexes), pp. 755-756.

[51] GB.267/LILS/WP/PRS/1.

[52] GB.265/LILS/5, GB.265/8/2.

[53] See International Labour Conference, Twelfth Session, Geneva, 1929, Record of Proceedings, p. 743; the term abrogation refers to Conventions which have come into force; for Conventions which have not entered into force, such a procedure should not be described as abrogation but as "withdrawal". This is the term that is used in this connection below.

[53] GB.267/PFA/15/1.

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 1996.]

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

United States of America

1. UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

(*a*) Adbi Hosh Askir (Plaintiff) vs. United Nations, Hon. Boutros Boutros Ghali, Joseph E. Connor, Brown & Root Services Corp. and "Doe" Corporations (Defendants) Judgement No. 95 Civ. 11008 (JGK) of 29 July 1996[1]

Action to recover damages relating to the alleged unauthorized and unlawful possession of plaintiff's property – Restrictive or obsolete immunity – Question of exception to the immunity afforded by the Convention on the Privileges and Immunities of the United Nations – Allegations of malfeasance do not strip the United Nations of its immunity – Issue of United Nations intervening in civil wars.

This is an action to recover in excess of $190 million in damages relating to the alleged unauthorized and unlawful possession of the plaintiff's property in Mogadishu, Somalia, during military and humanitarian operations of the United Nations there beginning in or about April 1992. The plaintiff's property is a compound encompassing approximately 1 million square metres containing and office complex, a hotel, recreational facilities, restaurants and other facilities. The compound was allegedly occupied and used as a military logistics and supply base by the United Nations and its agents, Brown & Root Services Corp. ("Brown & Root"), and the Doe Corporation defendants. The plaintiff alleges that the United Nations wrongfully and without proper authorization occupied approximately one quarter of the compound over that period of time is approximately $190 million, one quarter of which he alleges is allocable to the United Nations. The plaintiff asserts claims against the Secretary-General of the United Nations, Boutros Boutros-Ghali and the Under-Secretary-General for Administration and Management, Joseph E. Connor, (the "United Nations Defendants"), in their official and individual capacities, claiming lost rental value, (count 1); gross negligence in failing to ensure payments to the plaintiff, (count 2); and violations of the New York Human Rights Law, Executive Law § 296, arising out of the failure to pay the plaintiff based on his race and national origin, (count 3). In addition to his claim for compensatory damages of $193,779,447, the plaintiff also seeks exemplary damages of $750 million and prejudgment interest 18% per year compounded daily, and attorney's fees and costs.

This action is based on diversity jurisdiction pursuant to *28 U.S.C. § 1332*(a)(2). The plaintiff is a citizen of the Republic of Somalia. Boutros-Ghali is a citizen of Egypt, Connor is a citizen of either New York, New Jersey or Connecticut, and Brown & Root is incorporated in Delaware and has its principal place of business in Texas. At a hearing held on 18 July 1996, the Court raised the issue of whether the inclusion of aliens as both plaintiff and defendant served to destroy diversity. See, e.g., *International Shipping Co., S.A. v. Hydra Offshore, Inc., 875 F.2d 388, 391-92* (2d Cir.) cert. Denied, *493 U.S. 1003, 107 L. Ed. 2d 558, 110 S. Ct. 563 (1989), Corporacion Venezolana de Fomento v. Vintero Sales Corp., 629 F.2d 786, 790 (2d Cir. 1980),* cert. denied, *449 U.S. 1080, 66 L. Ed. 2d 804, 101 S. Ct. 863 (1981).* In response, and on consent of defendant Brown & Root, the plaintiff has dropped defendant Boutros-Ghali as a defendant in the present case, thus remedying any jurisdictional defect. n1

n1 Although the plaintiff and Brown & Root submitted the stipulation based on Fed. R. Civ. p. 21, in this circuit the proper approach is to amend the pleadings pursuant to Fed. R. civ. p. 15(a). *See In re Joint E. and S. D.sts. Asbestos Litig., 124 F.R.D. 538, 541-42* (S. & E.D.N.Y. 1989) (citing *Kerr v. Compagnie De Ultramar, 250 F.2d 860, 864 (2d Cir. 1958)*), aff'd sub nom. *Johnson v. Celotex Corp., 899 F.2d 1281* (2d Cir.), cert. Denied, *498 U.S. 920, 112 L.Ed. 2d 250, 111 S. Ct. 297 (1990)*; but see *Safeco Ins. Co. of America v. City of White House, 36 F.3d 540, 546 (6th Cir. 1994)* (refusing to follow Kerr as an "aberration" and noting no difference between application of rule 15(*a*) and rule 21 for curing diversity defect). Therefore, the Court construes the stipulation between the parties as a stipulation to amend pursuant to rule 15(*a*) to remove Boutros-Ghali as a party. The stipulation will be so ordered and the Complaint is deemed so amended. Regardless of the procedural device used, however, it is apparent that Boutros-Ghali should be dropped as a defendant. His presence is not necessary in the present suit and, as reflected by the agreement of the parties, dropping him as a party will not prejudice the remaining parties.

The United Nations Defendants have not been served with the summons and complaint. Legal counsel for the United Nations has submitted papers, however, asserting absolute immunity of the United Nations and the United Nations Defendants and requesting the Court dismiss the Complaint sua sponte. At the Court's request, the Untied States, while not a party in the present case, has submitted papers in support of the United Nations Defendants' suggestion of dismissal. N2 The plaintiff opposes dismissal of the United Nations Defendants and seeks an order permitting the United States Marshal Service to serve the United Defendants.

n2 The United States has not filed a formal Statement of Interest pursuant to *28 U.S.C. § 517.*

After considering the submissions, and after listening to oral argument oat the hearing 18 July 1996, the Court dismisses the Complaint sua sponte as to the remaining United Nations Defendant, Connor, for lack of subject matter jurisdiction pursuant to Fed. R. Civ. p. 12(b)(1) because Connor is immune from this suit. n3

n3 The plaintiff asserts claims against Connor in both his official and individual capacities. The plaintiff acknowledges that the claims against Connor in his official capacity may be treated as an action against the United Nations itself. With respect to the claims against Connor in his individual capacity, none of Connor's alleged actions are outside of the scope of his official duties, however, notwithstanding the plaintiff's bare allegation to the contrary. The plaintiff does nothing more than allege that "the United Nations had no authority or power under the Charter of the United Nations to go into Somalia in the first place." (Letter from Leroy Wilson, Jr. to Hon. John G. Koeltl, dated 13 June 1996, p. 5; see Compl. P 10.) The mere allegation that the United Nations did not possess the authority to undertake its missions in Somalia does not make whatever actions Connor may have taken to carry out those missions any less a part of his official function. In any event, the immunities provided to Connor under article 5, §18 of the United Nations Convention are applicable here and would afford him protection in his individual capacity, as described infra. See *Donald v. Orfila, 252 U.S. App. D.C. 134, 788 F.2d 36, 37 (D.C. Cir. 1986).*

Article 2 of the Convention on the Privilege and Immunities of the United Nations ("United Nations Convention"), 13 February 1946, 21 U.S.T. 1418, T.I.A.S. 6900, acceded to by the United States in 1970, provides, in relevant part:

> The United Nations, its property and assets wherever located any by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity."

United Nation Convention, art. 2, § 2, 21 U.S.T., p. 1422. See *Boimah v. United Nations General Assembly, 664 F. Supp. 69, 71 (E.D.NY.Y. 1987)*["Under the United Nations.] Convention the United Nations' immunity is absolute, subject only to the Organization's express waiver of immunity in this case by the United Nations. With respect to officials of the United Nations, immunity is provided under article 5, which provides, in relevant part:

Officials of the United Nations shall: (*a*) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity...United Nations Convention, art. 5, § '8, 21 U.S.T. p. 1432.

The plaintiff offers three arguments against dismissal based on immunity:

A.

First, with respect to the United Nations Convention, the plaintiff argues that the immunity afforded under article 2 is coextensive with the immunity provided to international organizations under the International Organizations Immunities Act ("IOIA"), *22 U.S.C. § 288a.* n4 The plaintiff argues that the IOIA affords the United Nations the same immunity provided to foreign Governments under the Foreign Sovereign Immunities Act ("FSIA"), *28 U.S.C. § 1602* et seq. The plaintiff takes the position that FSIA, and therefore for the purpose of the United Nations lOIA, provide only restrictive immunity. The Supreme Court recently explained the distinction between restrictive and absolute immunity:

Under the restrictive, as opposed to the "absolute," theory of foreign sovereign immunity, a State is immune from the jurisdiction of foreign courts as to its sovereign or public acts (jure imperii), but not as to those that are private or commercial in character (jure gesitionis)....[A] State engages in commercial activity under the restrictive theory when it exercises "'only those powers that can also be exercised by private citizens,'" as distinct form those ";powers peculiar to sovereigns.'" Put differently, a foreign State engages in commercial activity for purposes of the restrictive theory only when it acts "in a manner of a private player within" the market. *Saudi Arabia v. Nelson, 507 U.S. 349, 359-60, 123 L. Ed. 2d 47, 113 S. Ct. 1471 (1993)* (citations omitted). The plaintiff argues that this action arises from the commercial activities of the United Nations, namely the leasing and occupation of property, and therefore falls outside the bounds of restrictive immunity.

N4 The United Nations was designated an international organization by President Truman in 1946. See Ex. Ord. No. 9698, *11 Fed. Reg. 1809* (February 9, 1946).

It is necessary to decide, first, whether the restrictive immunity doctrine of FSIA applies to the United Nations through IOIA, or second, whether that restrictive immunity would trump the otherwise absolute immunity afforded by the United Nations Convention itself. Neither of these questions is necessary to determine because even if the more limited restrictive immunity doctrine applied, the claims in the present case do not arise out of commercial activity by the United Nations. Compare *Tuck v. Pan American Health Org., 215 U.S. App. D.C. 201, 668 F.2d 547, 550 (D.C. Cir. [*372] 1981)* (declining to decide whether international organization governed by IOIA was granted restrictive or absolute immunity by virtue of FSIA because activity was not commercial); *Broadbent v. Organization of American States, 202 U.S. App. D.C. 27, 628 F.2d 27, 32-33 (D.C. Cir. 1980)* (same).

The scope of restrictive immunity is determined by the nature of the activity rather than its motivation or purpose. See *Saudia Arabia, 507 U.S. at 360; Broadbent, 628 F.2d at 33; Friedar v. Government of Israel, 614 F. Supp. 395, 399 (S.D.N.Y. 1985)*. In the present case, the plaintiff complains that his property was seized and occupied by the United Nations as part of its military operation, even one directed at ensuring the delivery of humanitarian relief, is not an endeavor commonly associated with private citizens indeed, military operations are a distinctive province of sovereigns and Governments. The occupation of property during such an operation to house troops, store an distribute supplies and ordinance, or manage the logistics and planning and parcel of such an operation. The United Nations mission in Somalia provided "a military force to enable relief agencies to deliver food and other supplies to the Somali people." (Comp. P 11.) This is not a case of the United Nations arranging for one of its official to lease a residential apartment in a foreign State and providing head, hot water, and electricity—this is a case of an armed military occupation in a country where the Government had been overthrown and no administration had taken its place. (Comp. P 8.) Indeed, the perimeter of the compound in Mogadishu was secured with "sandbags, landmines, barbed wire and other anti-personnel

weapons." (Compl. P 22.) There is no doubt that the operation of a military logistics and supply base was not commercial activity of the sort contemplated under the restrictive immunity doctrine. See *Saudia Arabia, 507 U.S. at 361* ("[A] foreign State's exercise of the power of its police has long been understood for purposes of the restrictive theory as peculiarly sovereign in nature."); *Friedar, 614 F. Supp. at 399* (acts relating to recruiting for armed forces and determining veterans benefits were "purely governmental").

Accordingly, even if the immunity available to the United Nations and its officials is only restrictive immunity, the immunity still applies because the nature of the acts complained of by the plaintiff are the exercise of governmental functions rather than private commercial activity.

B.

The plaintiff's second argument is that the interpretation of the term "immunity" in the United Nations Convention itself should exclude commercial activities. The plaintiff makes this argument by pointing out that judicial decisions involving the interpretation of the scope of the United Nations Convention have related principally to employment disputes between former employees and the United Nations or its agencies. See *De Luca v. The United Nations Organization, 841 F. Supp. 531* (S.D.N.Y.), aff'd without opinion, *41 F3d 1502 (2d Cir. 1994)*, cert. Denied, *131 L. Ed 2d 310, 115 S. Ct. 1429 (1995); Klyumel v. United Nations, 1992 U.S. Dist. LEXIS 20876, No. 92 Civ. [**12] 4231, 1992 WL 447314* (S.D.N.Y. 4 December 1992) (report and recommendation by Grubin, M.J.). aff'd and adopted, *1993 U.S. Dist. LEXIS 1690, 1993 WL 42708* (S.D.N.Y. 17 February 1993); *Boimah, 664 F. Supp. 69*; see also *Shamsee v. Shamsee, 74 A.D.2d 357, 428 N.Y.S. 2d 33* (2d Dep't 1980) (appeal of contempt order against United Nations Joint Staff Pension Fund).

None of these cases limit their respective interpretations of the immunity afforded by the United Nations Convention. Indeed, in DeLuca the Court observed that the United Nations Convention contained no exceptions to its immunity provisions, obviating any need to consider whether FSIA or IOIA applied. See *De Luca, 841 F. Supp. at 533 n.1*. The United Nations Convention by its terms provides immunity from "every form of legal process," the only exception being express waiver by the United Nations itself.

In any event, even if there is an exception to the immunity provided by article 2 of the United Nations Convention based on a distinction between commercial and noncommercial activity, as explained above, the activities upon which this lawsuit is based on a distinction between commercial and noncommercial activity, as explained above, the activities upon which this lawsuit is based are not commercial.

Accordingly, the immunity provided by the United Nations Convention applies in the present case.

C.

The plaintiff's third and final argument is based on the allegedly wrongful nature of the acts of the United Nations and Connor. The plaintiff argues that the United Nations did not have the authority to adopt the resolutions passed in connection with the peacekeeping operations in Somalia. The plaintiff also alleges that Connor was not authorized to refuse to pay the plaintiff rent for the use of the compound or to refuse to pay him because of racial animus or bias based on the plaintiff's national origin. The plaintiff also makes allegations of fiscal improprieties relating to the operation of the United Nations generally and the operation in Somalia in particular, attributing the mismanagement to defendant Connor. (Comp. P 46-50)

The plaintiff's allegations of malfeasance do not serve to strip the United Nations or Connor of their immunities afforded under the United Nations Convention. See *De Luca, 841 F. Supp. at 535* (defendant remained immune under IOIA notwithstanding allegations of illegality and wrongdoing); *Tuck, 668 F.2d at 550 n. 7* (IOIA immunity still applied notwithstanding allegations of race discrimination); *Donald v. Orfila, 252 U.S. App. D.C. 134, 788 F.2d 36, 37 (D.C. Cir. [**14] 1986)* (allegations of improper motive did not strip individual of immunity under IOIA).

The allegation that the United Nations did not properly adopt its own resolutions authorizing its actions in Somalia is equally unavailing. The plaintiff has done nothing more than offer conclusory allegations that the missions in Somalia were beyond United Nations authority because they were interventions in civil wards. This allegation stands in direct contradiction to a series of duly adopted United Nations Security Counsel resolutions, including resolutions 794 (3 December 1992) and 814 26 March 1993), each adopted pursuant to Chapter VII of the United Nations Charter of the United Nations.

Accordingly, the plaintiff's allegations of misconduct by Connor and lack of authority by the United Nations do not overcome Connor's assertion of immunity in the present case.

Conclusion

For the reasons explained in this Opinion, the Court dismisses sua sponte the claims against defendant Connor in his official and individual capacities pursuant to Fed. R. Civ. p. 12(b)(i) for lace of subject, matter jurisdiction because, as described above, Connor is immune from being sued in the present action.

(*b*) S. Kadic, on her own behalf and on behalf of her infant sons Benjamin and Ognjen, Internationalna Iniciativa Zena Bosne I Hercegovine "Biser", and Zene Bosne I Hercegovine (Plaintiff-Appellants) vs. Radovan Karadvzic (Defendant0Appelee). Jane Doe I, on behalf of herself and all others similarly situated; and Jane Doe II, on behalf of herself and as administratix of the estate of her deceased mother, and on behalf of all others similarly situated, Plaintiffs-Appellants. Judgements Nos. 1541, 1544, Dockets 94-9035, 94-9069.

Jurisdiction of domestic courts in cases of violation of international law – Genocide and war crimes – Definition of a State in international law – Privileges and immunities of the United Nations

Two groups of victims from Bosnia and Herzegovina brought actions against the self proclaimed president of the unrecognized Bosnian-Serb entity under, inter alia, the Alien Tort Claims Act for violations of international law. The United States District Court for the Southern District of New York, Peter K. Leisure, J., 866 F. Supp. 734, dismissed actions for lack of subject matter jurisdiction and plaintiffs appealed. The Court of Appeals, Jon O. Newman, Chief Judge, held that: (1) plaintiffs sufficiently alleged violations of customary international law and law of war for purposes of Alien Tort Claims Act; (2) plaintiffs sufficiently alleged that unrecognized Bosnian-Serb entity of "Srpeak" was a "State," and that defendant acted under color of law for purposes of international law violations requiring official action; (3) defendant was not immune from personal service of process while invitee of United Nations; (4) actions were not precluded by political question doctrine; and (5) defense under act of state doctrine was waived.

Reversed and remanded.

1. *Federal Courts — 192.10, 243*

The Alien Tort Claims Act confers federal subject-matter jurisdiction when an alien sues for tort committed in violation of the law of nations, i.e., international law; here is no federal subject-matter jurisdiction under the Alien Tort Claims Act unless complaint adequately pleads violation of law of nations or treaty of United States. 28 U.S.C.A. §1350.

2. *International law — 1*

Federal courts ascertaining content of the law of nations, for purposes of action brought under Alien Tort Claims Act, must interpret international law not as it was when Act was enacted, but as it has evolved and exists among nations of world today. 28 U.S.C.A. § 1350.

3. *International law — 2*

In action brought under Alien Tort Claims Act, federal courts find norms of contemporary international law by consulting works of jurists writing professedly on public law, by general usage and practice of nations, or by judicial decisions recognizing and enforcing that law. 28 U.S.C.A. § 1350.

4. *Criminal law — 45.50*

International law — 1, 10.11

Slaves — 2

War and national emergency — 11

Law of nations, as understood in modern era for purposes of action brought under Alien Tort Claims Act, does not confine its reach to State action, in that certain forms of conduct violate law of nations whether undertaken by those acting under auspices of state or only as private individuals, such as piracy, slave trade, and war crimes. 28 U.S.C.A. § 1350; Restatement (Third) of the Foreign Relations § 404; note preceding § 201.

5. *International law — 1, 10.11*

Acts of genocide violate law of nations, or customary international law, regardless of whether offenders acted as individuals or as members of organizations. 18 U.S.C.A. § 1091.

6. *International law — 10.11*

Claims that self-proclaimed leader of unrecognized Bosnian-Serb entity personally planned and ordered campaign of murder, rape, forced impregnation, and other forms of torture designed to destroy religious and ethnic groups of Bosnian Muslims and Bosnian Croats clearly stated violation of international law norm proscribing genocide, regardless of whether person acted under color of law, for purposes of action brought under Alien Tort Claims Act. 18 U.S.C.A. § 1091; 28 U.S.C.A. § 1350.

7. *War and national emergency — 11*

Acts of murder, rape, torture, and arbitrary detention of civilians, committed in course of hostilities, are "war crimes" in violation of international law of war.

See publication Words and Phrases for other judicial constructions and definitions.

8. *War and national emergency — 11*

International law of war imposes an affirmative duty on military commanders to take appropriate measures within their power to control troops under their command for prevention of war crimes.

9. *Treaties — 8*

War and national emergency — 11

Under law of war as codified in Geneva Conventions, all "parties" to conflict, including insurgent military groups, are obliged to adhere to most fundamental requirements of law of war.

10. *War and national emergency — 11*

Claims that self-proclaimed leader of unrecognized Bosnian-Serb entity personally planned and ordered campaign of murder, rape, forced impregnation, and other forms of torture against noncombatants in Bosnian civil war clearly stated "war crimes" in violation of most fundamental norms of international law of war, for purposes of action brought under Alien Tort Claims Act. 28 U.S.C.A. § 1350.

See publication Words and Phrases for other judicial constructions and definitions.

11. *International law — 1*

War and national emergency — 11

Torture Victim Act codifies universally accepted norm of international law prohibiting official torture and extends it to cover summary execution; however, torture and summary execution, when not perpetrated in course of genocide or war crimes, are proscribed only when committed by state officials or under color of law. Torture Victim Protection Act of 1991, §§ 2(a), 3(a), 28 U.S.C.A. § 1350 note.

12. *International law — 3, 4*

Under international law, a "state" is entity that has defined territory and permanent population, that is under control of its own government, and that engages in, or has capacity to engage in, formal relations with other such entities; recognition by other states is not required. Restatement (Third) of Foreign Relations §§ 201, 202 comment.

See publication Words and Phrases for other judicial constructions and definitions.

13. *International law — 8*

Any government, however violent and wrongful in its origin, must be considered "de facto government" if it is in full and actual exercise of sovereignty over territory and people large enough for nation. Restatement (Third) of Foreign Relations § 201.

See publication Words and Phrases for other judicial constructions and definitions.

14. *International law — 1, 4*

Customary international law of human rights, such as proscription of official torture, applies without distinction between recognized and unrecognized states. Restatement (Third) of Foreign Relations §§ 207, 702.

15. *International law — 3*

Plaintiff classes of Bosnian victims, who brought actions under Alien Tort Claims Act against self-proclaimed leader of unrecognized Bosnian-Serb entity, sufficiently alleged that entity called, sufficiently alleged that entity called "Srpska" satisfied criteria to be considered a "state" for purposes of establishing international law violations requiring state action; Srpska was alleged to control defined territory, to control populations within its power, to have entered into agreements with other governments, and to have had president, legislature, and its own currency. 28 U.S.C.A. § 1350; Restatement (Third) of Foreign Relations §§ 201, 207, 702.

16. *International law — 10.11*

Plaintiff classes of Bosnian victims who brought actions under Alien Tort Claims Act against self-proclaimed leader of unrecognized Bosnian-Serb entity, sufficiently alleged that defendant acted under color of law, for purposes of establishing international law violations which required official action, by alleging that defendant acted in concert with officials of former Yugoslavian state of Serbia. 28 U.S.C.A. § 1350.

17. *Federal Courts — 192.10*

"Color of law" jurisprudence of 1983 is relevant guide to whether defendant has engaged in international law violations requiring "official action" for purposes of jurisdiction under Alien Tort Claims Act. 28 U.S.C.A. § 1350; 42 U.S.C.A. § 1983.

18. *Civil rights — 198(4)*

Private individual acts under "color of law," within meaning of § 1983, when he acts together with state officials or with significant state aid. 42 U.S.C.A. § 1983.

19. *International law — 10.11*

In construing terms "actual or apparent authority" and "color of law" under Torture Victim Protection Act, courts are to look to principles of agency law and to jurisprudence under 42 U.S.C.A. 1983, respectively. Torture Victim Protection Act of 1991, § 1 et seq., 28 U.S.C.A. § 1350 note; 42 U.S.C.A. § 1983.

20. *Federal courts — 192.10*

Though Torture Victim Protection Act creates cause of action for official torture, that statute, unlike Alien Tort Act, is not itself jurisdictional statute. 28 U.S.C.A. § 1331; Torture Victim Protection Act of 1991, § 1 et. seq., 28 U.S.C.A. § 1350 note.

21. *Federal courts — 192.10*

Torture Victim Protection Act permitted plaintiff classes of Bosnian victims to pursue their claims of official torture against self-proclaimed leader of unrecognized Bosnian-Serb entity under jurisdiction conferred by Alien Tort Claims Act and also under general federal question jurisdiction statute. 28 U.S.C.A. § 1331, 1350; Torture Victim Protection Act of 1991, § 1 et. seq., 28 U.S.C.A. § 1350 note.

22. *Federal civil procedure — 415.1*

Treaties — 8

Neither United Nations Headquarters Agreement nor federal common law provided defendant, the self-proclaimed leader of unrecognized Bosnian-Serb entity called "Srpska," immunity from service of process while in judicial district as "invitee" of United Nations. 22 U.S.C.A. § 287 note; Restatement (Third) of Foreign Relations § 469 note.

23. *Constitutional law — 69*

Mere possibility that defendant, the self-proclaimed leader of unrecognized Bosnian-Serb entity called "Srpska," might be some future date be recognized by United States as head of state of friendly nation and might thereby acquire head-of state immunity did not transform claims of plaintiff Bosnian victims under Alien Tort Claims Act and Torture Victim Protection Act into nonjusticiable request for advisory opinion. 28 U.S.C.A. § 1350; Torture Victim Protection Act of 1991, § 1 et seq., 28 U.S.C.A. § 1350 note.

24. *Constitutional law — 68(1)*

Not every case "touching foreign relations" is nonjusticiable as political question, and judges should not reflexively invoke doctrines to avoid difficult and somewhat sensitive decisions in context of human rights; preferable approach is to weigh carefully relevant considerations on case-by-case basis.

25. *Constitutional law — 68(1)*

A "nonjusticiable political question" would ordinarily involve one or more of following factors: textually demonstrable constitutional commitment of issue to coordinate political department; lack of judicially discoverable and manageable standards for resolving it; or impossibility of deciding without initial policy determination of kid clearly for nonjudicial discretion; impossibility of deciding without initial policy determination of kind clearly for nonjudicial discretion; impossibility of court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; unusual need for unquestioning adherence to political decision already made; or potentiality of embarrassment from multifarious pronouncements of various departments on one question.

See publication Words and Phrases for other judicial constructions and definitions.

26. *Constitutional law — 68(1)*

Actions by plaintiff classes of Bosnian victims against self-proclaimed leader of unrecognized Bosnian-Serb for violations of international law under Alien Tort Claims Act and Torture Victim Protection Act were not nonjusticiable political questions; officials of United States expressly disclaimed any concern that political question doctrine should be invoked to prevent litigation of subject lawsuits. 28 U.S.C.A. § 1350; Torture Victim Protection Act of 1991, § 1 et seq., 28 U.S.C.A. § 1350 note.

27. *Federal Courts — 616*

Act of state doctrine was not asserted in district court, and was therefore not before court on appeal, in actions by plaintiff classes of Bosnian victims against self-proclaimed leader of unrecognized Bosnian-Serb for violations of international law under Alien Tort Claims Act and Torture Victim Protection Act. 28 U.S.C.A. § 1350; Torture Victim Protection Act of 1991, § 1 et seq., 28 U.S.C.A. § 1350 note.

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Beth Stephens, New York City (Matthew J. Chachére, Jennifer Green, Peter Weiss, Michael Retner, Jules Lobel, Center for Constitutional Rights, New York City; Rhonda Copelon, Celina Romany, International Women's Human Rights Clinic, Flushing, NY; Judith Levin, International League of Human Rights, New York City; Harold Hongju Koh, Ronald C. Slye, Swati Agrawal, Bruce Brown, Charlotte Burrows, Carl Goldfarb, Linda Keller, Jon Levitsky, Daniyal Mueenuddin, Steve Parker, Maxwell S. Peltz, Amy Valley, Wendy Weiser, Allard K. Lowenstein International Human Rights Clinic, New Haven, CT., the brief), for plaintiffs-appellants, Jane Doe I and Jane Doe II.

Catharine A. MacKinnon, Ann Arbor, MI (Martha F. Davis, Deborah A. Ellis, Yolanda S. Wu, NOW Legal Defense and Education Fund, New York City, on the brief), for plaintiffs-appellants Kadic, Internationalna Iniciativa Zena Bosne I Hercegovine, and Zena Bosne I Hercegovine.

Ramsey Clark, New York City (Lawrence W. Schilling, New York City, on the brief), for defendant-appellee.

Drew S. Days, III, Solicitor General, and Conrad K. Harper, Legal Adviser, Department of State, Washington, DC, submitted a Statement of Interest of the U.S.; Frank W. Hunger, Asst. Atty. Gen., and Douglas Letter, Appellate Litigation Counsel, on the brief.

Karen Honeycut, Vladeck, Waldman, Elias & Englehard, New York, NY, submitted a brief for amici curiae Law Professors Frederick M. Abbott, et al.

Nancy Kelly, Women Refugee Project, Harvard Immigration and Refugee Program, Cambridge and Somerville Legal Services, Cambridge, Mass., submitted a brief for amici curiae Alliances – an African Women's Network, et al.

Juan E. Mendez, Joanne Mariner, Washington, DC; Professor Ralph G. Steinhardt, George Washington University School of Law, Washington, DC; Paul L. Hoffman, Santa Monica, CA; Professor Joan Fitzpatrick, University of Washington School of Law, Seattle, WA, submitted a brief for amicus curiae Human Rights Watch.

Stephen M. Schneebaum, Washington, DC, submitted a brief for amici curiae The International Human Rights Law Group, et al.

Before: NEWMAN, Chief Judge, FEINBERG and WALKER, Circuit Judges.

JON O. NEWMAN, Chief Judge:

Most Americans would probably be surprised to learn that victims of atrocities committed in Bosnia are suing the leader of the insurgent Bosnian-Serb forces in a United States District Court in Manhattan. Their claims seek to build upon the foundation of this Court's decision in *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), which recognized the important principle that the venerable Alien Tort Act, 28 U.S.C. § 1350 (1988), enacted in 1789 but rarely invoked since then, validly creates federal court jurisdiction for suits alleging torts committed anywhere in the world against aliens in violation of the law of nations. The pending appeals pose additional significant issues as to the scope of the Alien Tort Act: whether some violations of the law of nations may be remedied when committed by those not acting under the authority of a state; if so, whether genocide, war crimes and crimes against humanity are among the violations that do not require state action; and whether a person, otherwise liable for a violation of the law of nations, is immune form service of process because he is present in the United States as an invitee of the United Nations.

These issues arise on appeals by two groups of plaintiffs-appellants from the November 19, 1994, judgment of the United States District Court for the Southern District of New York (Peter K. Leisure, Judge), dismissing, for lack of subject-matter jurisdiction, their suits against defendant-appellee Radovan Karadzic, President of the self-proclaimed Bosnian-Serb republic of "Srpska." Doe v. Karadzic, 866 F. Supp. 734 (S.D.N.Y. 1994) ("*Doe*"). For the reasons set forth below, we hold that subject-matter jurisdiction exists, that Karadzic may be found liable for genocide, war crimes, and crimes against humanity in his private capacity as a state actor, and that he is not immune from service of process. We therefore reverse and remand.

Background

The plaintiffs-appellants are Croat and Muslim citizens of the internationally recognized nation of Bosnia-Herzegovina, formerly a republic of Yugoslavia. Their complaints, which we accept as true for purposes of this appeal, allege that they are victims, and representatives of victims, of various atrocities, including brutal acts of rape, forced prostitution, forced impregnation, torture, and summary execution, carried out by Bosnian-Serb military forces as part of a genocidal campaign conducted in the course of the Bosnian civil war. Karadzic, formerly a citizen of Yugoslavia and now a citizen of Bosnia-Herzegovina, is the President of a three-man presidency of the self-proclaimed Bosnian-Serb republic within Bosnia-Herzegovina, sometimes referred to as "Srpska," which claims to exercise lawful authority, and does in fact exercise actual control, over large parts of the territory of Bosnia-Herzegovina. In his capacity as President, Karadzic possesses ultimate command authority over the Bosnian-Serb military forces, and the injuries perpetrated upon plaintiffs were committed as part of a

pattern of systematic human rights violations that was directed by Karadzic and carried out by the military forces under his command. The complaints allege that Karadzic acted in an official capacity either as the titular head of Srpska or in collaboration with the government of the recognized nation of the former Yugoslavia and its dominant constituent republic, Serbia.

The two groups of plaintiffs asserts causes of action for genocide, rape, forced prostitution and impregnation, torture and other cruel, inhuman, and degrading treatment, assault and battery, sex and ethic inequality, summary execution, and wrongful death. They sought compensatory and punitive damages, attorney's fees, and, in one of the cases, injunctive relief. Plaintiffs grounded subject-matter jurisdiction in the Alien Tort Act, the Torture Victim Protection Act of 1991 ("Torture Victim Act"), Pub.L. No. 102-256, 106 Stat. 73 (1992), *codified at* 28 U.S.C. § 1350 note (Supp. V 1993), the general federal-question jurisdictional statute, 28 U.S.C. § 1331 (1988), and principles of supplemental jurisdiction, 28 U.S.C. § 1367 (Supp. V 1993).

In early 1993, Karadzic was admitted to the United States on three separate occasions as an invitee of the United Nations. According to affidavits submitted by the plaintiffs, Karadzic was personally served with the summons and complaint in each action during two of these visits while he was physically present in Manhattan. Karadzic admits that he received the summons and complaint in the *Kadic* action, but disputes whether the attempt to serve him personally in the *Doe* action was effective.

In the District Court, Karadzic moved for dismissal of both actions on the grounds of insufficient service of process, lack of personal jurisdiction, lack of subject-matter jurisdiction, and nonjusticiability of plaintiffs' claims. However, Karadzic submitted a memorandum of law and supporting papers only on the issues of service of process and personal jurisdiction, while reserving the issues of subject-matter jurisdiction and non-justiciability for further briefing, if necessary. The plaintiffs submitted papers responding only to the issues raised by the defendant.

Without notice or a hearing, the District Court by-passed the issues briefed by the parties and dismissed both actions for lack of subject-matter jurisdiction. In an Opinion and Order, reported at 866 F. Supp. 734, the District Judge preliminarily noted that the Court might be deprived of jurisdiction if the Executive Branch were to recognize Karadzic as the head of state of a friendly nation, *see Lafontant v. Aristide*, 844 F. Supp. 128 (E.D.N.Y. 1994) (head-of-state immunity), and that this possibility could render the plaintiff's pending claims requests for an advisory opinion. The District Judge recognized that this consideration was not dispositive but believed that it "militates against this Court exercising jurisdiction." *Doe*, 866 F. Sup. at 738.

Turning to the issue of subject-matter jurisdiction under the Alien Tort Act, the Court concluded that "acts committed by non-state actors do not violate the law of nations," *id.* at 739. Finding that "[t]he current Bosnian-Serb warring military faction does not constitute a recognized state," *id.* at 741, and that "the members of Karadzic's faction do not act under the color of any recognized state law," id., the Court concluded that "the acts alleged in the instant action[s], while grossly repugnant, cannot be remedied through [the Alien Tort Act]," *id.* at 740-41. The Court did not consider the plaintiffs' alternative claim that Karadzic acted under color of law by acting in concert with the Serbian Republic of the former Yugoslavia, a recognized nation.

The District Judge also found that the apparent absence of state action barred plaintiffs' claims under the Torture Victim Act, which expressly requires that an individual defendant act "under actual or apparent authority, or color of law, or any foreign nation," Torture Victim Act § 2(a). With respect to plaintiffs' further claims that the law of nations, as incorporated into federal common law, gives rise to an implied cause of action over which the Court would have jurisdiction pursuant to section 1331, the Judge found that the law of nations does not give rise to implied rights of action absent specific Congressional authorization, and that, in any event, such an implied right of action would not lie in the absence of state action. Finally, having dismissed all of plaintiffs' federal claims, the Court declined to exercise supplemental jurisdiction over their state-law claims.

Discussion

Though the District Court dismissed for lack of subject-matter jurisdiction, the parties have briefed not only that issue but also the threshold issues of personal jurisdiction and justiciability under the political question doctrine. Karadzic urges us to affirm on any one of these three grounds. We consider each in turn.

I. *Subject-matter jurisdiction*

Appellants allege three statutory bases for the subject-matter jurisdiction of the District Court – the Alien Tort Act, the Torture Victim Act, and the general federal-question jurisdictional statute.

A. THE ALIEN TORT ACT

1. *General Application to Appellants' Claims*

[1] The Alien Tort Act provides:

> The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

28 U.S.C. § 1350 (1988). Our decision in *Filártiga* established that this statute confers federal subject-matter jurisdiction when the following three conditions are satisfied: (1) an alien sues (2) for a tort (3) committed in violation of the law of nations (i.e., international law)[2] 630 F.2d at 887; *see also Amerada Hess Shipping Corp. v. Argentine Republic*, 830 F.2d 421, 425 (2d Cir. 1987), *rev'd on other grounds*, 488 U.S. 428, 109 S.Ct. 683, 102 Led.2d 818 (1989). The first two requirements are plainly satisfied here, and the only disputed issue is whether plaintiffs have pleaded violations of international law.

Because the Alien Tort Act requires that plaintiffs plead a "violation of the law of nations" at the jurisdictional threshold, this statute requires a more searching review of the merits to establish jurisdiction that is required under the more flexible "arising under" formula of section 1331. *See Filártiga*, 630 F.2d at 887-88. Thus, it is not a sufficient basis for jurisdiction to plead merely a colorable violation of the law of nations. There is no federal subject-matter jurisdiction under the Alien Tort Act unless the complaint adequately pleads a violation of the law of nations (or treaty of the United States).

[2, 3] *Filártiga* established that courts ascertaining the content of the law of nations "must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today." *Id.* at 881; *see also Amerada Hess*, 830 F.2d at 425. We find the norms of contemporary international law by "'consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law.'" *Filártiga* , 630 F.2d at 880 (quoting *United States v. Smith* 18 U.S. (5 Wheat.) 153, 160-161, 5 L.Ed. 57 (1820)). If this inquiry discloses that the defendant's alleged conduct violates "well-established, universally recognized norms of international law," *id.* at 888, as opposed to "idiosyncratic legal rules," *id.* at 881, then federal jurisdiction exists under the Alien Tort Act.

Karadzic contends that appellants have not alleged violations of the norms of international law because such norms bind only states and persons acting under color of a state's law, not private individuals. In making this contention, Karadzic advances the contradictory positions that he is not a state actor, see Brief for Appellee at 19, even as he asserts that he is the President of the self-proclaimed Republic of Srpska, see statement of Radovan Karadzic, May 3, 1993, submitted with Defendant's Motion to Dismiss. For their part, the Kadic appellants also take somewhat inconsistent positions in pleading defendant's role as Presidet of Srpska, Kadic Complaint ¶ 13, and also contending that "Karadzic is not an official of any government," Kadic Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss at 21 n. 25.

Judge Leisure accepted Karadzic's contention that "acts committed by non-state actors do not violate the law of nations," Doe, 866 F. Supp. At 739, and considered him to be a non-state actor.[3] The Judge appears to have deemed state action required primarily on the basis of cases determining the need for state action as to claims of official torture, *see, e.g., Carmichael v. United Technologies Corp.*, 835 F.2d 109 (5th Cir. 1988), without consideration of the substantial body of law, discussed below, that renders private individuals liable for some international law violations.

[4] We do not agree that the law of nations, as understood in the modern era, confines its reach to state action. Instead, we hold that certain forms of conduct violate the law of nations whether undertaken by those acting under the auspices of a state or only as private individuals. An early example of the application of the law of nations to the acts of private individuals is the prohibition against piracy. *See United States v. Smith*, 18 U.S. (5 Wheat.) 153, 161, 5 L.Ed. 57 (1820); *United States v. Furlong*, 18 U.S. (5 Wheat.) 184, 196-97, 5 L.Ed. 64 (1820). In *The Brig Malek Adhel*, 43 U.S. (2 How.) 210, 232, 11 L.Ed. 239 (1844), the Supreme Court observed that pirates were "*hostis humani generis*" (an enemy of all mankind) in part because they acted "without...any pretense of public authority." *See generally* 4 William Blackstone, *Commentaries on the Laws of England* 68 (facsimile of 1st ed. 1765-1769, Univ. of Chi. Ed., 1979). Later examples are prohibitions against the slave trade and certain war crimes. See M. Cheirf Bassiouni, *Crimes Against Humanity in International Criminal Law* 193 (1992); Jordan Paust, *The Other Side of Right; Private Duties Under Human Rights Law,* 5 Harv. Hum.Rts.J. 51 (1992).

The liability of private persons for certain violations of customary international law and the availability of the Alien Tort Act to remedy such violations was early recognized by the Executive Branch in an opinion of Attorney General Bradford in reference to acts of American citizens aiding the French fleet to plunder British property off the coast of Sierra Leone in 1795. *See Breach of Neutrality*, 1 Op. Att'y Gen. 57, 59 (1795). The Executive Branch has emphatically restated in this litigation its position that private persons may be found liable under the Alien Tort Act for acts of genocide, war crimes, and other violations of international humanitarian law. *See Statement of Interest of the United States* at 5-13.

The Restatement (Third) of the Foreign Relations Law of the United States (1986) (*"Restatement (Third)"*) proclaims: "Individuals may be held liable for offenses against international law, such as piracy, war crimes, and genocide." *Restatement (Third)* pt. II, introductory note. The Restatement is careful to identify those violations that are actionable when committed by a state, *Restatement (Third)* § 702[4] and a more limited category of violations of "universal concern," *id.* §[5] partially overlapping with those listed in section 702. Though the immediate focus of section 404 is to identify those offenses for which a state has jurisdiction to punish without regard to territoriality or the nationality of the offenders, *cf. id.* § 402(1)(*a*), (2), the inclusion of piracy and slave trade from an earlier era and aircraft hijacking from the modern era demonstrates that the offenses of "universal concern" include those capable of being committed by non-state actors. Although the jurisdiction authorized by section 404 is usually exercised by application of criminal law, international law also permits states to establish appropriate civil remedies, *id.* § 404 cmt. B, such as the tort actions authorized by the Alien Tort Act. Indeed, the two cases invoking the Alien Tort Act prior to *Filártiga* both applied the civil remedy to private action. *See Adra v. Clift*, 195 F. Supp. 857 (D.Md.1961); *Bolchos v. Darrel*, 3 F. Cas. 810 (D.S.C. 1795) (No. 1,607).

Karadizic disputes the application of the law of nations to any violations committed by private individuals, relying on *Filártiga* and the concurring opinion of Judge Edwards in *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 775 (D.C. Cir. 1984), *cert. denied*, 470 U.S.6 1003, 105 S. Ct. 1354, 84 L.Ed.2d 377 (1985).[6] Filártiga involved an allegation of torture committed by a state official. Relying on the United Nations' Declaration on the Protection of All Persons from Being Subjected to Torture, G.A.Res. 3452, U.N. GAOR, U.N. Doc. A/1034 (1975) (hereinafter "Declaration on Torture"), as a definitive statement of norms of customary international law prohibiting states form permitting torture, we ruled that "official torture is now prohibited by eh law of nations." Filártiga, 630 F.2d at 884 (emphasis added). We had no occasion to consider whether international law violations other than torture are actionable against private individuals, and nothing in *Filártiga* purports to preclude such a result.

Nor did Judge Edwards in his scholarly opinion in *Tel-Oren* reject eh application of international law to any private action. On the contrary, citing piracy and slave-trading as early examples, he observed that there exists a "handful of crimes to which the law of nations attributes individual responsibility," 726 F.2d at 795. Reviewing authorities similar to those consulted in Filártiga, he merely concluded that torture—the specific violation alleged in *Tel-Oren*—was not within the limited category of violations that do not require state action.

Karadzic also contends that Congress intended the state-action requirement of the Torture Victim Act to apply to actions under the Alien Tort Act. We disagree. Congress enacted the Torture Victim Act to codify the cause of action recognized by this Circuit in *Filártiga*, and to further extend that cause of action to plaintiffs who are U.S. citizens. See H.R. rep. No. 367, 102d Cong., 2d Sess., at 4 (1991), *reprinted in* 1992 U.S.C.C.A.N. 84, 86 (explaining that codification of *Filártiga* was necessary in light of skepticism expressed by Judge Bork's concurring opinion in *Tel-Oren*). At the same time, Congress indicated that the Alien Tort Act "has other important uses and should not be replaced," because

> Claims based on torture and summary executions do not exhaust the list of actions that may appropriately be covered [by the Alien Tort Act]. That statute should remain intact to permit suits based on other norms that already exist or may ripen in the future into rules of customary international law.

Id. The scope of the Alien Tort Act remains undiminished by enactment of the Torture Victim Act.

2. *Specific Application of the Alien Tort Act to Appellants' Claims*

In order to determine whether the offenses alleged by the appellants in this litigation are violations of the law of nations that may be the subject of Alien Tort Act claims against a private individual, we must make a particularized examination of these offenses, mindful of the important precept that "evolving standards of international law govern who is within the [Alien Tort Act's] jurisdictional grant." *Amerada Hess*, 830 F.2d at 425. In making that inquiry, it will be helpful to group the appellants' claims into three categories: (*a*) genocide, (*b*) war crimes and (*c*) other instances of inflicting death, torture, and degrading treatment.

[5] (*a*) *Genocide.* In the aftermath of the atrocities committed during the Second World War, the condemnation of genocide as contrary to international law quickly achieved broad achieved broad acceptance by the community of nations. In 1946, the General Assembly of the United Nations declared that genocide is a crime under international law that is condemned by the civilized world, whether the perpetrators are "private individuals, public officials or statement." G.A.Res. 96(I), 1 U.N.GAOR, U.N. Doc. A/64/Add.1, at 188-89 (1946). The General Assembly also affirmed the principles of Article 6 of the Agreement and Charter Establishing the Nuremberg War Crimes Tribunal for punishing "'persecutions on political, racial, or religious grounds,'" regardless of whether the offenders acted "'as individuals or as members of organizations,'" *In re Extradition of Demjanjuk*, 612 F.Supp. 544, 555 n. 11 (N.D. Ohio 1985) (quoting Article 6). *See* G.A. Res. 95(I), 1 U.N.GAOR, U.N.Doc. A/64/Add. 1, at 188 (1946).

The Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, *entered into force* Jan. 12, 1951, *for the United States* Feb. 23, 1989 (hereinafter "Convention on Genocide"), provides a more specific articulation of genocide in international law. The Convention, which has been ratified by more than 120 nations, including the United States, *see* U.S. Dept. of State, *Treaties in Force* 345 (1994), defines "genocide" to mean any of

the following acts committed with intent to destroy, in whole or in part, a national, ethical, racial or religious group, as such:

(*a*) Killing members of the group;
(*b*) Causing serious bodily or mental harm to members of the group;
(*c*) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(*d*) Imposing measures intended to prevent births with the group;
(*e*) Forcibly transferring children of the group to another group.

Convention on Genocide art. II. Especially pertinent to the pending appeal, the Convention makes clear that "[p]ersons committing genocide...shall be punished, *whether they are constitutionally responsible rulers, public officials or private individuals*." Id. art. IV (emphasis added). These authorities unambiguously reflect that, from its incorporations into international law, the proscription of genocide has applied equally to state and non-state actors.

The applicability of this norm to private individuals is also confirmed by the Genocide Convention Implementation Act of 1987, 18 U.S.C. § 1091 (1988), which criminalizes acts of genocide without regard to whether the offender is acting under color of law, see id. § 1091(*a*) ("[w]hoever" commits genocide shall be punished), if the crime is committed within the United States or by a U.S. national, id. § 1091(*d*). Though Congress provided that the Genocide Convention Implementation Act shall not "be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding," id. § 1092, the legislative decision not to create a new private remedy is not already available under the Alien Tort Act. Nothing in the Genocide Convention Implementation Act or its legislative history reveals an intent by Congress to repeal the Alien Tort Act insofar as it applies to genocide,[7] and the two statutes are surely not repugnant to each other. Under these circumstances, it would be improper to construe the Genocide Convention Implementation Act as repealing the Alien Tort Act by implication. See Rodriguez v. United States, 480 U.S. 522, 524, 107 S.Ct. 1391, 1392, 94 L.Ed.2d 533 (1987) ("[R]epeals by implication are not favored and will not be found unless an intent to repeal is clear and manifest.") (citations and internal quotation marks omitted); United States v. Cook, 922 F.2d 1026, 1034 (2d Cir.) ("mutual exclusivity" of statues is required to demonstrate Congress's "clear, affirmative intent to repeal"), cert. Denied, 500 U.S. 941, 111 S.Ct. 2235, 114 L.Ed.2d 477 (1991).

[6] Appellants' allegations that Karadzic personally planned and ordered a campaign of murder, rape, forced impregnation, and other forms of torture designed to destroy the religious and ethnic groups of Bosnian Muslims and Bosnian Croats clearly state a violation of the international law norm proscribing genocide, regardless of whether Karadzic acted under color of law or as a private individual. The District Court has subject-matter jurisdiction over these claims pursuant to the Alien Tort Act.

[7, 8] (*b*) War crimes. Plaintiffs also contend that the acts of murder, rape, torture, and arbitrary detention of civilians, committed in the course of hostilities, violate the law of war. Atrocities of the types alleged here have long been recognized in international law as violations of the law of war. *See In re Yamashita*, 327 U.S. 1, 14, 66 S.Ct. 340, 347, 90 L.Ed. 499 (1946). Moreover, international law imposes an affirmative duty on military commanders to take appropriate measures within their power to control troops under their command for the prevention of such atrocities. *Id.* at 15-16, 66 S.Ct. at 347-48.

[9] After the Second World War, the law of war was codified in the four Geneva Conventions,[8] which have been ratified by more than 180 nations, including the United States, *see Treaties in Force, supra.* At 398-99. Common article 3, which is substantially identical in each of the four Conventions, applies to "armed conflict[s] not of an international character" and binds "each Party to the conflict...to apply, as a minimum, the following provisions":

> Persons taking no active part in the hostilities...shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end, the following acts are and shall remain prohibited at any time an din any place whatsoever with respect to the above-mentioned persons:
>
> (*a*) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
> (*b*) taking of hostages;
> (*c*) outrages upon personal dignity, in particular humiliating and degrading treatment;
> (*d*) the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court....

Geneva Convention I art. 3(1). Thus, under the law of war as codified in the Geneva Conventions, all "parties" to a conflict–which includes insurgent military groups–are obliged to adhere to these most fundamental requirements of the law of war.[9]

[10] The offenses alleged by the appellants, if proved, would violate the most fundamental norms of the law of war embodied in common article 3, which binds parties to internal conflicts regardless of whether they are recognized nations or roving hordes of insurgents. The ability of private individuals for committing war crimes has been recognized since World War I and was confirmed at Nuremberg after World War II, *see* Telford Taylor, *Nuremberg Trials: War Crimes and International Law*, 450 Int'l Conciliation 304 (April 1949) (collecting cases), and remains today an important aspect of international law, see Jordan Paust, *After My Lai: The Case for War Crimes Jurisdiction Over Civilians in Federal District Courts, in* 4 The Vietnam War and International Law 447 (R. Falk ed., 1976). The District Court has jurisdiction pursuant to the Alien Tort Act over appellants' claims of war crimes and other violations of international humanitarian law.

[11] (*c*) *Torture and summary execution.* In *Filártiga*, we held that *official* torture is prohibited by universally accepted norms of international law, *see* 630 F.2d at 885, and the Torture Victim Act confirms this holding and extends it to cover summary execution. Torture Victim Act §§ 2(a), 3(a). However, torture and summary execution — when not perpetrated in the course of genocide or war crimes — are proscribed by international law only when committed by state officials or under color of law. *See* Declaration on Torture art. 1 (defining torture as being "inflicted by or at the instigation of a public official"); Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment pt. I, art. 1, 23 I.L.M. 1027 (1984), *as modified*, 24 I.L.M. 535 (1985), *entered into force* June 26, 1987, *ratified by United States* Oct. 21, 1994, 34 I.L.M. 590, 591 (1995) (defining torture as "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in

an official capacity"); Torture Victim Act § 2(*a*) (imposing liability on individuals acting "under actual or apparent authority, or color of law, of any foreign nation").

In the present case, appellants allege that acts of rape, torture, and summary execution were committed during hostilities by troops under Karadzic's command and with the specific intent of destroying appellants' ethnic0religious groups. Thus, many of the alleged atrocities are already encompassed within the appellants' claims of genocide and war crimes. Of course, at this threshold stage in the proceedings it cannot be known whether appellants will be able to prove the specific intent that is an element of genocide, or prove that each of the alleged torts were committed in the course of an armed conflict, as required to establish war crimes. It suffices to hold at this stage that the alleged atrocities are actionable under the Alien Tort Act, without regard to state action, to the extent that they were committed in pursuit of genocide of war crimes, and otherwise may be pursued against Karadzic to the extent that he is shown to be a state actor. Since the meaning of the state action requirement for purposes of international law violations will likely arise on remand and has already been considered by the District Court, we turn next to that requirement.

3. *The state action requirement for international law violations*

In dismissing plaintiffs' complaints for lack of subject-matter jurisdiction, the District Court concluded that the alleged violations required state action and that the "Bosnian-Serb entity" headed by Karadzic does not meet the definition of a state. *Doe*, 866 F. Supp. At 741 n. 12. Appellants contend that they are entitled to prove that Srpska satisfies the definition of a state for purposes of international law violations and, alternatively, that Karadzic acted in concert with the recognized state of the former Yugoslavia and its constituent republic, Serbia.

[12, 13](*a*) *Definition of a state in international law.* The definition of a state is well established in international law:

> Under international law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.

Restatement (Third) § 201; accord *Klinghoffer*, 937 F.2d at 47; *National Petrochemical Co. of Iran v. M/T Stolt Sheaf*, 860 F.2d 551, 553 (2d Cir. 1988); *see also Texas v. White*, 74 U.S. (7 Wall.) 700, 720, 19 L.Ed. 227 (1868). "[A]ny government, however violent and wrongful in its origin, must be considered a de facto government if it was in the full and actual exercise of sovereignty over a territory and people large enough for a nation." *Ford v. Surget*, 97 U.S. (7 Otto) 594, 620, 24 L.Ed. 1018 (1878) (Clifford, J., concurring).

Although the Restatement's definition of statehood requires the *capacity* to engage in formal relations with other states, it does not require recognition by other states. *See Restatement (Third)* § 202 cmt. B ("An entity that satisfies the requirements of § 201 is a state whether or not its statehood is formally recognized by other states"). Recognized states enjoy certain privileges and immunities relevant to judicial proceedings, *see, e.g., Pfzer Inc. v. India*, 434 U.S. 308,

318-20, 98 S.Ct. 584, 590-91, 54 L.Ed.2d 563 (1978) (diversity jurisdiction); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 408-12, 84 S.Ct. 923, 929-32, 11 L.Ed.2d 804 (1964) (access to U.S. courts); *Lafontant*, 844 F. Supp. At 131 (head-of-state immunity), but an unrecognized state is not a juridical nullity. Our courts have regularly given effect to the "state" action of unrecognized states. *See, e.g., United States v. Insurance Cos.*, 89 U.S. (22 Wall.) 99, 101-03, 22 L.Ed. 816 (1875) (seceding states in Civil War); *Thorington v. Smith*, 75 U.S. (8 Wall.) 1, 9-12, 19 L.Ed. 361 (1868) (same); *Carl Zeiss Stiftung v. VEB Carl Zeiss Jena*, 433 F.2d 686, 699 (2d Cir. 1970), *cert. denied*, 403 U.S. 905, 91 S.Ct. 2205, 29 L.Ed.2d 680 (1971) (post-World War II East Germany).

[14] The customary international law of human rights, such as the proscription of official torture, applies to states without distinction between recognized and unrecognized states. *See Restatement (Third)* §§ 207, 702. It would be anomalous indeed if non-recognition by the United States, which typically reflects disfavor with a foreign regime — sometimes due to human rights abuses — had the perverse effect of shielding officials of the unrecognized regime from liability for those violations of international law norms that apply only to state actors.

[15] Appellants' allegations entitle them to prove that Karadzic's regime satisfies the criteria for a state, for purposes of those international law violations requiring state action. Srpska is alleged to control defined territory, control populations within its power, and to have entered into agreements with other governments. It has a president, a legislature, and its own currency. These circumstances readily appear to satisfy the criteria for a state in all aspects of international law. Moreover, it is likely that the state action concept, where applicable for some violations like "official" torture, requires merely the semblance of official authority. The inquiry, after all, is whether a person purporting to wield official power has exceeded internationally recognized standards of civilized conduct, not whether statehood in all its formal aspects exists.

[16-18] (*b*) *Acting in concert with a foreign state.* Appellants also sufficiently alleged that Karadzic acted under color of law insofar as they claimed that he acted in concert with the former Yugoslavia, the statehood of which is not disputed. The "color of law" jurisprudence of 42 U.S.C. § 1983 is a relevant guide to whether a defendant has engaged in official action for purposes of jurisdiction under the Alien Tort Act. *See Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1546 (N.D. Cal. 1987), *reconsideration granted in part on other grounds*, F.Supp. 707 (N.D. Cal. 1988). A private individual acts under color of law within the meaning of section 1983 when he acts together with state officials or with significant state aid. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 102 S. Ct. 2744, 2753-54, 73 L.Ed.2d 482 (1982). The appellants are entitled to prove their allegations that Karadzic acted under color of law of Yugoslavia by acting in concert with Yugoslav officials or with significant Yugoslavian aid.

B. The Torture Victim Protection Act

The Torture Victim Act, enacted in 1992, provides a cause of action for official torture and extrajudicial killing:

An individual who, under actual or apparent authority, or color of aw, of any foreign nation–

(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

Torture Victim § Act 2(a). The statute also requires that a plaintiff exhaust adequate and available local remedies, *id.* 2(b), imposes a ten-year statute of limitations, *id.* § 2(c), and defines the terms "extrajudicial killing" and "torture," § *id.* 3.

[19] By its plain language, the Torture Victim Act renders liable only those individuals who have committed torture or extrajudicial killing "under actual or apparent authority, or color of law, of any foreign nation." Legislative history confirms that his language was intended to "make [] clear that the plaintiff must establish some governmental involvement in the torture or killing to prove a claim," and that the statute "does not attempt to deal with torture or killing by purely private groups." H.R. Rep. No. 367, 102d Cong., 2d Sess., at 5 (1991), *reprinted in* 1992 U.S.C.C.A.N. 84, 87. In construing the terms "actual or apparent authority" and "color of law," courts are instructed to look to principles of agency law and to jurisprudence under 42 U.S.C. § 1983, respectively. *Id.*

[20, 21] Though the Torture Victim Act creates a cause of action for official torture, this statue, unlike the Alien Tort Act, is not itself a jurisdictional statute. The Torture Victim Act permits the appellants to pursue their claims of official torture under the jurisdiction conferred by the Alien Tort Act and also under the general federal question jurisdiction of section 1331, *see Xuncax v. Gramajo*, 866 F. Sup. 162, 178 (D. Mass. 1995) , to which we now turn.

C. Section 1331

The appellants contend that section 1331 provides an independent basis for subject-matter jurisdiction over all claims alleging violations of international law. Relying on the settled proposition that federal common law incorporates international law, *see the Paquete Habana*, 175 U.S. 677, 700, 20 S.Ct. 290, 299, 44 L.Ed. 320 (1900); *In re Estate of Ferdinand E. Marcos Human Rights Litigation (Marcos I)*, 978 F.2d 493, 502 (9th Cir. 1992), *cert. denied*, — U.S. —, 113 S. 2960, 125 L.Ed.2d 661 (1993); *Filártiga*, 630 F.2d at 886, they reason that causes of action for violations of international law "arise under" the laws of the United States for purposes of jurisdiction under section 1331. Whether that is so is an issue of some uncertainty that need not be decided in this case.

In *Tel-Oren*, Judge Edwards expressed the view that section 1331 did not supply jurisdiction for claimed violations of international law unless the plaintiffs could point to a remedy granted by the law of nations or argue successfully that such a remedy is implied. *Tel-Oren*, 726 F.2d at 779-80 n. 4. The law of nations generally does not create private causes of action to remedy its violations, but leaves to each nation the task of defining the remedies that are avail-

able for international law violations. *Id.* at 778 (Edwards, J., concurring). Some district courts, however, have upheld section 1331 jurisdiction for international law violations. *See Abebe-Kiri v. Negewo*, No. 90-2010 (N.D.Ga. Aug. 20, 1993), *appeal argued*, No. 93-9133 (11th Cir. Jan. 10, 1995); *Martinez-Baca v. Suarez-Mason*, No. 87-2057, slop op. at 4-5 (N.D. Cal. Apr. 22, 1988); *Forti v. Suarez-Mason*, 672 F.Supp. 1531, 1544 (N.D. Cal. 1987).

We recognized the possibility of section 1331 jurisdiction in *Filártiga*, 630 F.2d at 887 n. 22, but rested jurisdiction solely on the applicable Alien Tort Act. Since that Act appears to provide a remedy for the appellants' allegations of violations related to genocide, war crimes, and official torture, and the Torture Victim Act also appears to provide a remedy for their allegations of official torture, their causes of action are statutorily authorized, and, as in *Filártiga*, we need not rule definitively on whether any causes of action not specifically authorized by statute may be implied by international law standards as incorporated into United States law and grounded on section 1331 jurisdiction.

II. *Service of process and personal jurisdiction*

Appellants aver that Karadzic was personally served with process while he was physically present in the Southern District of New York. In the *Doe* action, the affidavits detail that on February 11, 1993, process servers approached Karadzic in the lobby of the Hotel Intercontinental at 111 East 48th St. in Manhattan, called his name and identified their purpose, and attempted to hand him the complaint from a distance of two feet, that security guards seized the complaint papers, and that the papers fell to the floor. Karadzic submitted an affidavit of a State Department security officer, who generally confirmed the episode, but stated that the process server did not come closer than six feet of the defendant. In the *Kadic* action, the plaintiffs obtained from Judge Owen an order for alternate means of service, directing service by delivering the complaint to a member of defendants' State Department security detail, who was ordered to hand the complaint to the defendant. The security officer's affidavit stats that he received the complaint and handed it to Karadzic outside the Russian Embassy in Manhattan. Karadzic's statement confirms that this occurred during his second visit to the United States, sometime between February 27 and March 8, 1993. Appellants also allege that during his visits to New York City, Karadzic stayed at hotels outside the "headquarters district" of the United Nations and engaged in non-United Nations-related activities such as fund-raising.

Fed.R.Civ.P. 4(e)(2) specifically authorizes personal service of a summons and complaint upon an individual physically present within a judicial district of the United States, and such personal service comports with the requirements of due process for the assertion of personal jurisdiction. *See Burnham v. Superior Court of California*, 495 U.S. 604, 110 S. Ct. 2105, 109 L.Ed.2d 631 (1990).

Nevertheless, Karadzic maintains that his status as an invitee of the United Nations during his visits to the United States rendered him immune from service of process. He relies on both the Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, *reprinted at* 22 U.S.C. § 287 note (1988) ("Headquarters Agreement"), and a claimed federal common law immunity. We reject both bases for immunity from service.

A. HEADQUARTERS AGREEMENT

[22] The Headquarters Agreement provides for immunity from suit only in narrowly defined circumstances. First, "service of legal process...may take place within the headquarters district only with the consent of and under conditions approved by the Secretary-General." *Id.* § 9(a). This provision is of no benefit to Karadzic, because he was not served within the well-defined confines of the "headquarters district," which is bounded by Franklin D. Roosevelt Drive, 1st Avenue, 42nd Street, and 48th Street, *see id.* annex 1. Second, certain representatives of members of the United Nations, whether residing inside or outside of the "headquarters district," shall be entitled to the same privileges and immunities as the United States extends to accredited diplomatic envoys. *Id.* §15. This provision is also of no benefit to Karadzic, since he is not a designated representative of any member of the United Nations.

A third provision of the Headquarters Agreement prohibits federal, state, and local authorities of the United States from "impos[ing] any impediments to transit to or from the headquarters district of...persons invited to the headquarters district by the United Nations...on official business." *Id.* § 11. Karadzic maintains that allowing service of process upon a United Nations invitee who is on official business would violate this section, presumably because it would impose a potential burden — exposure to suit — on the invitee's transit to and from the headquarters district. However, this Court has previously refused "to extend the immunities provided by the Headquarters Agreement beyond those explicitly stated." *See Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 48 (2 Cir. 1991). We therefore reject Karadzic's proposed construction of section 11, because it would effectively create an immunity from suit for United Nations invitees where none is provided by the express terms of the Headquarters Agreement.[19]

The parties to the Headquarters Agreement agree with our construction of it. In response to a letter from plaintiffs' attorneys opposing any grant of immunity to Karadzic, a responsible State Department official wrote: "Mr. Karadzic's status during his recent visits to the United States has been solely as an 'invitee' of the United Nations, and as such he enjoys no immunity from the jurisdiction of the courts of the United States." Letter from Michael J. Habib, Director of Eastern European Affairs, U.S. Dept. of State, to Beth Stephens (Mar. 24, 1993) ("Habib Letter"). Counsel for the United Nations has also issued an opinion stating that although the United States must allow United Nations invitees access to the Headquarters District, invitees are not immune form legal process while in the United States at locations outside of the Headquarters District. *See In re Galvano*, [1963] U.N.Jur.Y.B. 164 (opinion of U.N. legal counsel); *see also Restatement (Third)* § 469 reporter's note 8 (U.N. invitee "is not immune from suit or legal process outside the headquarters district during his sojourn in the United States").

B. FEDERAL COMMON LAW IMMUNITY

Karadzic nonetheless invites us to fashion a federal common law immunity for those within a judicial district as a United Nations invitee. He contends that such a rule is necessary to prevent private litigants from inhibiting the United Nations in its ability to consult with invited visitors. Karadzic analogizes his proposed rule to the "government contacts exception" to the District of Columbia's

long-arm statute, which has been broadly characterized to mean that "mere entry [into the District of Columbia] by non-residents for the purpose of contacting federal government agencies cannot serve as a basis for in personam jurisdiction," *Rose v. Silver*, 394 A.2d 1368, 1370 (D.C. 1978); *see also Naatex Consulting Corp. v. Watt*, 722 F.2d 779, 785-87 (D.C. Cir. 1983) (construing government contacts exception to District of Columbia's long-arm statute), *cert. denied*, 467 U.S. 1210, 104 S.Ct. 2399, 81 L.Ed.2d 355 (1984). He also points to a similar restriction upon assertion of personal jurisdiction on the basis of the presence of an individual who has entered a jurisdiction in order to attend court or otherwise engage in litigation. *See generally* 4 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1076 (2d ed. 1987).

Karadzic also endeavors to find support for a common law immunity in our decision in *Klinghoffer*. Though, as noted above, Klinghoffer declined to extend the immunities of the Headquarters agreement beyond those provided by its express provisions, the decision applied immunity considerations to its construction of New York's long-arm statute, N.Y. Civ. Prac.L. & R. 301 (McKinney 1990), in deciding whether the Palestine Liberation Organization (PLO) was doing business in the state. *Klinghoffer* construed the concept of "doing business" to cover only those activities of the PLO that were not United Nations-related. *See* 937 F.2d at 51.

Despite the considerations tht guided *Klinghoffer* in its narrowing construction of the general terminology of NewYork's long-arm statute as applied to United Nations activities, we decline the invitation to create a federal common law immunity as an extension of the precise terms of a carefully crafted treaty that struck the balance between the interests of the United Nations and those of the United States.

[23] Finally, we note that the mere possibility that Karadzic might at some future date be recognized by the United States as the head of state of a friendly nation and might thereby acquire head-of-state immunity does not transform the appellants' claims into a nonjusticiable request for an advisory opinion, as the District Court intimated. Even if such future recognition, determined by the Executive Branch, *see Lafontant*, 844 F. Supp. At 133, would create head-of-state immunity, *but see In re Doe*, 860 F.2d 40, 45 (2d Cir. 1988) (passage of Foreign Sovereign Immunities Act leaves scope of head-of-state immunity uncertain), it would be entirely inappropriate for a court to create the functional equivalent of such an immunity based on speculation about what the Executive Branch *might* do in the future. *See Mexico v. Hoffman*, 324 U.S. 30, 35, 65 S. Ct. 530, 532, 89 L.Ed. 729 (1945) ("[I]t is the duty of the courts, in a matter so intimately associated with our foreign policy..., not to enlarge an immunity to an extent which the government...has not seen fit t orecognize.").

In sum, if appellants personally served Karadzic with the summons and complaint while he was in New York but outside of the U.N. headquarters district, as they are prepared to prove, he is subject to the personal jurisdiction of the District Court.

III. *Justiciability*

We recognize that cases of this nature might pose special questions concerning the judiciary's proper role when adjudication might have implications in the conduct of this nation's foreign relations. We do not read *Filártiga* to

mean that the federal judiciary must always act in ways that risk significant interference with United States foreign relations. To the contrary, we recognize that suits of this nature can present difficulties that implicate sensitive matters of diplomacy historically reserved to the jurisdiction of the political branches. *See First National Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 767, 92 S.Ct. 1808, 1813, 32 L.Ed.2d 466 (1972). We therefore proceed to consider whether, even though the jurisdictional threshold is satisfied in the pending cases, other considerations relevant to justiciability weigh against permitting the suits to proceed.

[24] Two nonjurisdictional, prudential doctrines reflect the judiciary's concerns regarding separation of powers: the political question doctrine and the act of state doctrine. It is the "'constitutional' underpinnings' of these doctrines that influenced the concurring opinions of Judge Robb ad Judge Bork in *Tel-Oren*. Alghtough we too recognize the potentially detrimental effects of judicial action in cases of this nature, we do not embrace the rather categorical views as to the inappropriateness of judicial action urged by Judges Robb and Bork. Not every case "touching foreign relations" is nonjusticiable, *see Baker v. Carr*, 369 U.S. 186, 211, 82 S.Ct. 691, 707, 7 L.Ed.2d 663 (1962); *Lamont v. Woods*, 948 F.2d 825, 831-32 (2d Cir. 1991), and judges should not reflexively invoke these doctrines to avoid difficult and somewhat sensitive decisions in the context of human rights. We believe a preferable approach is to weigh carefully the relevant considerations on a case-by-case basis. This will permit the judiciary to act where appropriate in light of the express legislative mandate of the Congress in section 1350, without comprising the primacy of the political branches in foreign affairs.

Karadzic maintains that these suits were properly dismissed because they present nonjusticiable political questions. We disagree. Although these cases present issues that arise in a politically charged context, that does not transform them into cases involving nonjusticiable political questions. "[T]he doctrine 'is one of "political questions," not one of "political cases."'" *Klinghoffer*, 937 F.2d at 49 (quoting *Baker*, 369 U.S. at 217, 82 S.Ct. at 710).

[25] A nonjusticiable political question would ordinarily involve one or more of the following factors:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. at 217, 82 S.Ct. at 710; *see also Can v. United States*, 14 F.3d 160, 163 (2d Cir. 1994). With respect to the first three factors, we have noted in a similar context involving a tort suit against the PLO that "[t]he department to whom this issue has been 'constitutionally committed' is none other than our own-the Judiciary." *Klinghoffer*, 937 F.2d at 49. Although the

present actions are not based on the common law of torts, as was *Klinghoffer*, our decision in *Filártiga* established that universally recognized norms of international law provide judicially discoverable and manageable standards for adjudicating suits brought under the Alien Tort Act, which obviates any need to make initial policy decisions of the kind normally reserved for nonjudicial discretion. Moreover, the existence of judicially discoverable and manageable standards further undermines the claim that such suits relate to matters that are constitutionally committed to another branch. *See Nixon v. United States*, 506 U.S. 224, 227-29, 113 S.Ct. 732, 735, 122 L.Ed.2d 1 (1993).

The fourth through sixth *Baker* factors appear to be relevant only if judicial resolution of a question would contradict prior decisions taken by a political branch in those limited contexts where such contradiction would seriously interfere with important governmental interests. Disputes implicating foreign policy concerns have the potential to raise political question issues, although, as the Supreme Court has wisely cautioned, "it is 'error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.'" *Japan Whaling Ass'n v. American Cetacean Society*, 478 U.S. 221, 229-30, 106 S.Ct. 2860, 2865-66, 92 L.Ed.2d 166 (1986) (quoting *Baker*, 369, U.S. at 211, 82 S.Ct. at 706-07).

The act of state doctrine, under which courts generally refrain from judging the acts of a foreign state within its territory, *see Banco Nacional de Cuba v. Sabbatineo*, 376 U.S. at 428, 84 S.Ct. 923, 940, 11 L.Ed.2d 804; *Underhill v. Hernandez*, 168 U.S. 250, 252, 18 S.Ct. 83, 84, 42 L.Ed. 456 (1897), might be implicated in some cases arising under section 1350. However, as in *Filártiga*, 630 F.2d at 889, we doubt that the acts of even a state official, taken in violation of a nation's fundamental law and wholly ungratified by that nation's government, could properly be characterized as an act of state.

[26] In the pending appeal, we need have no concern that interference with important governmental interests warrants rejection of appellants' claims. After commencing their action against Karadazic, attorneys for the plaintiffs in Doe wrote to the Secretary of State to oppose reported attempts by Karadzic to be granted immunity from suit in the United States; a copy of plaintiffs' complaint was attached to the letter. Far from intervening in the case to urge rejection of the suit on the ground that it presented political questions, the Department responded with a letter indicating that Karadzic was not immune from suit as an invitee of the United Nations. *See* Habib Letter, *supra*.[11] After oral argument in the pending appeals, this Court wrote to the Attorney General to inquire whether the United States wished to offer any further views concerning any of the issues raised. In a "Statement of Interest," signed by the Solicitor General and the State Department's Legal Adviser, the United States has expressly disclaimed any concern that the political question doctrine should be invoked to prevent the litigation of these lawsuits: "Although there might be instances in which federal courts are asked to issue rulings under the Alien Tort Statute or the Torture Victim Protection Act that might raise a political question, this is not one of them." Statement of Interest of the United States at 3. Though even an assertion of the political question doctrine by the Executive Branch, entitled to respectful consideration, would not necessarily preclude adjudication, the Government's reply to our inquiry reinforces our view that adjudication may properly proceed.

[27] As to the act of state doctrine, the doctrine was not asserted in the District Court and is not before us on this appeal. *See Filártiga*, 630 F.2d at 889. Moreover, the appellee has not had the temerity to assert in this Court that the acts he allegedly committed are the officially approved policy of a state. Finally, as noted, we think it would be a rare case in which the act of state doctrine precluded suit under section 1350. *Banco Nacional* was careful to recognize the doctrine "in the absence of ... unambiguous agreement regarding controlling legal principles," 376 U.S. at 428, 84 S.Ct. at 940, such as exist in the pending litigation, and applied the doctrine only in a context—expropriation of an alien's property—in which world opinion was sharply divided, see id. at 428-30, 84 S.Ct. at 940-41.

Finally, we note that at this stage of the litigation no party has identified a more suitable forum, and we are aware of none. Though the Statement of the United States suggests the general importance of considering the doctrine of *forum non conveniens*, it seems evident that the courts of the former Yugoslavia, either that the courts of the former Yugoslavia, either in Serbia or war-torn Bosnia, are not now available to entertain plaintiff's claims, even if circumstances concerning the location of witnesses and documents were presented that were sufficient to overcome the plaintiffs' preference for a United States forum.

Conclusion

The judgement of the District Court dismissing appellants' complaints for lace of subject-matter jurisdiction is reversed, and the cases are remanded for further proceedings in accordance with this opinion.

2. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Mark Steven Corrinet (Plaintiff) vs. United Nations, Hon. Boutros Boutros-Ghali, Gillian Sorensen and Ron Ginns (Defendats). Judgement No. C-95-0426 SAW. Memorandum and Order of 10 September 1996

Complaint against the Defendants' assertion of immunity from suit and failure to waive that immunity — Issue of "commercial activity exception" to immunity claim — Question whether S-G of the United Nations had a mandatory duty to waive immunity — Question whether Defendant Ginns was acting in his official capacity when he allegedly defamed the Plaintiff.

(*a*) *Background*

Plaintiff is a collector and dealer in historic documents, who claims to own the original signature pages of the United Nations Interim Agreement. He states that he has been trying to sell these pages, and is asking approximately $3 million dollars for them. In the course of this attempt, he contacted the United Nations in 1993-1994 with the goal of having the pages authenticated.

Plaintiff alleges that Defendant Ron Ginns was appointed by Defendant Gillian Sorensen to assist her in the preparation for the fiftieth anniversary Charter Day, to occur during 1995. Plaintiff further contends that he and Defendant Ginns have had a long-standing feud. Plaintiff claims that because of this feud, Defendant Ginns defamed Plaintiff by stating that Plaintiff was a fraud, and that his documents were not authentic and were valueless. Plaintiff asserts that these statements were false and that he has been injured by them both in reputation and by being unable to sell his documents.

Defendants, the United Nations and its officials, have not filed an answer to Plaintiff's complaint. Instead, Defendants submitted a letter to the Court (to which Plaintiff objected), stating that the United Nations and its officers are immune from this suit and will not waive that immunity. Plaintiff moves for a default judgement.

(*b*) *Discussion*

Pursuant to Federal Rule of Civil Procedure 12(*b*) (6), a court may sua sponte raise a motion to dismiss for failure to state a claim upon which relief can be granted.[12] *Silverton v. Dep't of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981); *Shockley v. Jones*, 823 F.2d 1068, 1072 (7th Cir. 1987) (sua sponte dismissal for failure to state a claim proper where a sufficient basis for the court's action appears from plaintiff's pleadings).

Defendants have not appeared in the present case, but assert in a statement of interest filed pursuant to 28 U.S.C. § 517 that their immunity from suit mandates dismissal pursuant to rule 12(*b*) (6) of the Federal Rules of Civil Procedure.

(i) *United Nations*

The United Nations has absolute 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, S 2. *See also Boimah v. United Nations General Assembly*, 664 F. Supp. 69, 71 (B.D.N.Y. 1987) (holding that absolute immunity of United Nations requires dismissal of complaint). The United Nations has not waived its immunity, and Plaintiff does not assert otherwise.

Plaintiff claims, however that the United Nations' immunity is lost because of the "commercial activity exception" embodied in 28 U.S.C. 1602, the Foreign Sovereign Immunities Act. Defendants, through the United States' Statement of Interest, argue that this exception does nothing to eviscerate the United Nations' independently established immunity granted by the United Nations Convention. The Court need not address this issue, however, because the transaction at issue was not commercial.[13]

Plaintiff argues that his alleged agreement with the United Nations for its eventual acquisition of his historic documents is analogous to a scenario whereby the Untied Nations would agree to purchase a piece of art from him. Plaintiff then argues that, because the latter is undeniably commercial in nature, so is the former. The "transaction" between the Plaintiff and the United Nations was not a purchase, however. The only thing that the Plaintiff was requesting from the United Nations was authentication of his documents, which was not a commercial transaction.[14] Plaintiff's intent that a third party eventually would donate these documents to the United Nations is irrelevant, and, in any event, is not a commercial transaction as far as the United Nations is concerned.

(ii) *Other Defendants*

Plaintiff also acknowledges that insofar as Defendatn Boutros-Ghali, Defendant Sorensen and Defendant Ginns were acting at all relevant times in their official capacities, they are immune from suit. Plaintiff claims, however that an alternate theory of liability applies to Defendant Boutros-Ghali, and that Defendant Ginns was not acting in his official capacity when he allegedly defamed Plaintiff.

Plaintiff argues that Defendant Secretary-General Boutros-Ghali violated a mandatory duty to waive the United Nations Convention's grant of immunity for Plaintiff's suit. For support of this novel proposition, Plaintiff cites a section of the Convention, which reads "[t]he Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, *in his opinion*, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations." United Nations Convention art, v. § 20 (emphasis added).

Plaintiff's attempt to transform this right into a mandatory duty as determined by a court is unavailing. For a court to look at the facts and find that the Secretary-General should have waived immunity would fly in the face of the express language of the Convention. The Secretary-General's opinion as to whether waiver is appropriate is the important issue, and this Court will not question the Secretary-General's opinion here. Indeed, absolute immunity would be worthless if courts were permitted to override the Secretary-General's decision as to whether that immunity should be waived.

Plaintiff also contends that Defendant Ginns was not acting in his official capacity when he allegedly defamed Plaintiff.[15] Plaintiff's complaint, however, asserts that Ginns "was at all times working within the scope and course of his status as an official with the United Nations." Complaint, p. 3, para. 16. Plaintiff cannot have it both ways.

The Court dismisses the suit in its entirety, but without prejudice as to Defendant Ginns, so that Plaintiff may refile his case as to Defendant Ginns if he chooses to pursue an individual action against him.

Accordingly, it is herby ordered that Plaintiff's complaint is dismissed as to Defendants United Nations, the Honorable Boutros Boutros-Ghali and Gillian Sorenson with prejudice, and as to Defendant Ron Ginns without prejudice. Plaintiff's motion for a default judgement is denied.

NOTES

[1] 933 F. Supp. 368, 1996 U.S. Dist. LEXIS 10943.

[2] *Filártiga* did not consider the alternative prong of the Alien Tort Act: suits by aliens for a tort committed in violation of "a treaty of the United States." See 630 F.2d at 880. As in *Filártiga*, plaintiffs in the instant cases "primarily rely upon treaties and other international instruments as evidence of an emerging norm of customary international law, rather th[a]n independent sources of law," *id.* at 880 n. 7.

[3] Two passages of the District Court's opinion arguably indicate that Judge Leisure found the pleading of a violation of the law of nations inadequate because Srpska, even if a state, is not a state "recognized" by other nations. The current Bosnian-Serb warring military faction does not constitute a recognized state...." *Doe*, 866 F. Supp at 741; "[t]he Bosnian-Serbs have achieved neither the level of organization nor the recognition that

was attained by the PLO [in *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984)]," *id.* However, the opinion, read as a whole, makes clear that the Judge believed that Srpska is not a state and was not relying on lack of recognition by other states. *See, e.g., id.* at 741 n. 12 ("The Second Circuit has limited the definition of 'state' to 'entities that have a defined [territory] and a permanent population, that are under the control of their own government, and that engage in or have the capacity to engage in, formal relations with other entities.' *Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 47 (2d Cir. 1991) (quotation, brackets and citation omitted). The current Bosnian-Serb entity fails to meet this definition.") We quote Judge Leisure's quotation from *Klinghoffer* with the word "territory," which was inadvertently omitted.

[4] Section 702 provides:

A state violates international law if, as a matter of state policy, it practices, encourages, or condones

(*a*) genocide,
(*b*) slavery or slave trade,
(*c*) the murder or causing the disappearance of individuals,
(*d*) torture or other cruel, inhuman, or degrading treatment or punishment,
(*e*) prolonged arbitrary detention,
(*f*) systematic racial discrimination, or
(*g*) a consistent pattern of gross violations of internationally recognized human rights.

[5] Section 404 provides:

A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism, even where [no other basis of jurisdiction] is present.

[6] Judge Edwards was the only member of the *Tel-Oren* panel to confront the issue whether the law of nations applies to non-state actors. Then Judge Bork, relying on separation of powers principles, concluded, in disagreement with *Filártiga*, that the Alien Tort Act did not apply to most violations of the law of nations. *Tel-Oren*, 726 F.2d at 798. Judge Robb concluded that the controversy was nonjusticiable. *Id.* at 823.

[7] The Senate Report merely repeats the language of section 1092 and does not provide any explanation of its purpose. *See* S. Rep. 333, 100th Cong., 2d Sess., at 5 (1988), *reprinted at* 1988 U.S.C.C.A.N. 4156, 4160. The House Report explains that section 1092 "clarifies that the bill creates no new federal cause of action in civil proceedings." H.R. Rep. 566, 100th Cong., 2d Sess., at 8 (1988) (emphasis added). This explanation confirms our view that the Genocide Convention Implementation Act was not intended to abrogate civil causes of action that might be available under *existing* laws, such as the Alien Tort Act.

[8] Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *entered into force* Oct. 21, 1950, *for the United States* Feb. 2, 1956, 6 U.S.T. 3114, T.I.A.S. 3362, 75 U.N.T.S. 31 (hereinafter "Geneva Convention I"); Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, *entered into force* Oct. 21, 1950, *for the United States* Feb. 2, 1956, 6 U.S.T. 3217, T.I.A.S. 3363, 75 U.N.T.S. 85; Convention Relative to the Treatment of Prisoners of War, *entered into force* Oct. 21, 1950, *for the United States* Feb. 2, 1956, 6 U.S.T. 3316, T.I.A.S. 3364, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, *entered into force* Oct. 21, 1950, *for the United States* Feb. 2, 1956, 6 U.S.T. 3516, T.I.A.S. 3365, 75 U.N.T.S. 287.

[9] Appellants also maintain that the forces under Karadzic's command are bound by the Protocol Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of Non-International Armed Conflicts, 16 I.L.M. 1442 (1977) ("Protocol II"), which has been signed but not ratified by the United States, *see* International Committee of the Red Cross: *Status of Four Geneva Conventions and Additional Protocols I and II*, 30 I.L.M. 397 (1991). Protocol II supplements the fundamental requirements of common article 3 for armed conflicts that "take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol." *Id.* art. 1. In addition, plaintiffs argue that the forces under Karadzic's command are bound by the remaining provisions of the Geneva Conventions, which govern international conflicts, see Geneva Convention I art 2, because the self-proclaimed Bosnian-Serb republic is a nation that is at war with Bosnia-Herzegovina or,

alternatively, the Bosnia-Herzegovina or, alternatively, the Bosnian–Serbs are an insurgent group in a civil war who have attained the status of "belligerents," and to whom the rules governing international wars therefore apply.

At this stage in the proceedings, however, it is unnecessary for us to decide whether the requirements of Protocol II have ripened into universally accepted norms of international law, or whether the provisions of the Geneva Conventions applicable to international conflicts apply to the Bosnian-Serb forces on either theory advanced by plaintiffs.

[10] Conceivably, a narrow immunity from service of process might exist under section 11 for invitees who are in *direct* transit between an airport (or other point of entry into the United States) and the Headquarters District. Even if such a narrow immunity did exist – which we do not decide – Karadzic would not benefit from it since he was not served while traveling to or from the Headquarters District.

[11] The Habib Letter on behalf of the State Department added:

We share your repulsion at the sexual assaults and other war crimes that have been reported as part of the policy of ethnic cleansing in Bosnia-Herzegovina. The United States has reported rape and other grave breaches of the Geneva Conventions to the United Nations. This information is being investigated by a United Nations Commission of Experts, which was established at U.S. initiative.

[12] Courts differ on whether notice and the opportunity for a hearing should be provided before dismissal on 12 (*b*) (6) grounds. *See Shockley*, 823 F.2d at 1073 (dismissal under Rule 12 (*b*) (6) without notice or a hearing is improper); *Smith v. Colorado Dep't of Corrections*, 23 F.3d 339, 340 (10th Cir. 1994) (sua sponte dismissal appropriate in the absence of notice and an opportunity to amend when amendment would be futile). Even in *Shockley*, however, the reviewing court declined to remind the action where notice and a hearing were not provided because it would be futile since the complaint failed as a matter of law. Accordingly, courts agree that where amendment would be futile, a district court may sua sponte dismiss with prejudice without giving the plaintiff notice or an opportunity for a hearing. In any event, while there has been no hearing in the present case, Plaintiff has had the opportunity to respond to Defendants' claims of immunity, and has done so in a 14-page document.

[13] Plaintiff's bare assertion that a commercial transaction is involved does not help him avoid dismissal. Plaintiff's complaint contains no facts indicating that the relationship between Plaintiff and the United Nations was commercial in any way.

[14] Plaintiff nowhere contends that his request that the United Nations authenticate the signature pages was a commercial transaction, and no payment of any kind was involved.

[15] To the extent that Defendant Ginns was acting in his official capacity, he is immune from suit. Designated United Nations officials are "immune 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. § 18 (*a*). Plaintiff does not argue that Defendant Sorensen ever acted outside her official capacity. As a result, Defendant Sorensen is immune from suit.

Part Four

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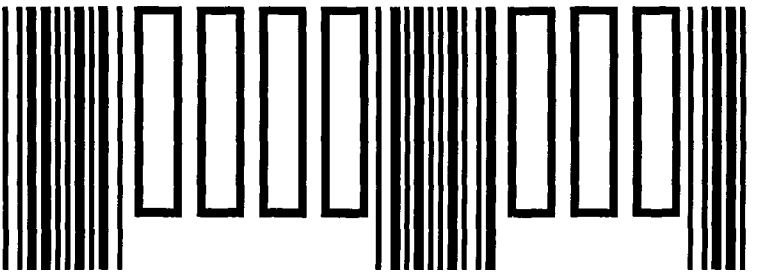

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