

UNITED NATIONS  
JURIDICAL YEARBOOK  
1997



UNITED NATIONS • NEW YORK, 2004

**ST/LEG/SER.C/41**

**UNITED NATIONS PUBLICATION**

**Sales No. E.02.V.1**

**ISBN 92-1-133650-3**

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**Manufactured in the United States of America**

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## FOREWORD

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

Chapters I and II of the present volume—the thirty-fifth 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 1997. Decisions given in 1997 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 conclusion of treaties and their publication in the United Nations *Treaty Series* following upon their entry into force. In the case of treaties too voluminous to fit into the format of the *Yearbook*, an easily accessible source is provided.

Finally, the bibliography, which is prepared under the responsibility of the Office of Legal Affairs by the Dag Hammarskjöld Library, lists works and articles of a legal character published in 1997.

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 the Caribbean
ESCAP	Economic and Social Commission for Asia and the Pacific
ESCWA	Economic and Social Commission for Western Asia
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 Corporation
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
IOM	International Organization for Migration
ITU	International Telecommunication Union
MIGA	Multilateral Investment Guarantee Agency
OECD	Organisation for Economic Cooperation and Development
OPEC	Organization of Petroleum Exporting Countries
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
UNIFEM	United Nations Development Fund for Women
UNITAR	United Nations Institute for Training and Research
UNOG	United Nations Office at Geneva
UNOV	United Nations Office at Vienna
UPU	Universal Postal Union
WHO	World Health Organization



WIPO	World Intellectual Property Organization
WMO	World Meteorological 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 INTERGOV- ERNMENTAL ORGANIZATIONS

#### 1. United Kingdom of Great Britain and Northern Ireland

##### (a) Merchant Shipping and Maritime Security Act, 1997<sup>1</sup>

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 Organizations Act 1968.

28.—(1) In this section "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.

(2) Except insofar 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.

### (b) United Nations Personnel Act 1997<sup>2</sup>

AN ACT TO ENABLE EFFECT TO BE GIVEN TO CERTAIN PROVISIONS OF THE CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 9 DECEMBER 1994 [27 FEBRUARY 1997]

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) If a person does outside the United Kingdom any act to or in relation to a United Nations worker which, if he had done it in any part of the United Kingdom, would have made him guilty of any of the offences mentioned in subsection (2), he shall in that part of the United Kingdom be guilty of that offence.

(2) The offences referred to in subsection (1) are—

- (a) murder, manslaughter, culpable homicide, rape, assault causing injury, kidnapping, abduction and false imprisonment;
- (b) an offence under section 18, 20, 21, 22, 23, 24, 28, 29, 30 or 47 of the Offences against the Person Act 1861; and
- (c) an offence under section 2 of the Explosive Substances Act 1883.

2.—(1) If a person does outside the United Kingdom any act, in connection with an attack on relevant premises or on a vehicle ordinarily used by a United Nations worker which is made when a United Nations worker is on or in the premises or vehicle, which, if he had done it in any part of the United Kingdom, would have made him guilty of any of the offences mentioned in subsection (2), he shall in that part of the United Kingdom be guilty of that offence.

(2) The offences referred to in subsection (1) are—

- (a) an offence under section 2 of the Explosive Substances Act 1883;
- (b) an offence under section 1 of the Criminal Damage Act 1971;
- (c) an offence under article 3 of the Criminal Damage (Northern Ireland) Order 1977; and
- (d) wilful fire-raising.

(3) In this section—

“relevant premises” means premises at which a United Nations worker resides or is staying or which a United Nations worker uses for the purpose of carrying out his functions as such a worker; and

“vehicle” includes any means of conveyance.

3.—(1) If a person in the United Kingdom or elsewhere contravenes subsection (2) he shall be guilty of an offence.

(2) A person contravenes this subsection if, in order to compel a person to do or abstain from doing any act, he—

- (a) makes to a person a threat that any person will do an act which is—
  - (i) an offence mentioned in section 1(2) against a United Nations worker, or
  - (ii) an offence mentioned in subsection (2) of section 2 in connection with such an attack as is mentioned in subsection (1) of that section, and
- (b) intends that the person to whom he makes the threat shall fear that it will be carried out.

(3) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term—

- (a) not exceeding ten years, and
- (b) not exceeding the term of imprisonment to which a person would be liable for the offence constituted by doing the act threatened at the place where the conviction occurs and at the time of the offence to which the conviction relates.

4.—(1) For the purposes of this Act a person is a United Nations worker, in relation to an alleged offence, if at the time of the alleged offence—

- (a) he is engaged or deployed by the Secretary-General of the United Nations as a member of the military, police or civilian component of a United Nations operation,
- (b) he is, in his capacity as an official or expert on mission of the United Nations, a specialized agency of the United Nations or the International Atomic Energy Agency, present in an area where a United Nations operation is being conducted,
- (c) he is assigned, with the agreement of an organ of the United Nations, by the Government of any State or by an international governmental organization to carry out activities in support of the fulfilment of the mandate of a United Nations operation,
- (d) he is engaged by the Secretary-General of the United Nations, a specialized agency or the International Atomic Energy Agency to carry out such activities, or
- (e) he is deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations, with a specialized agency or with the International Atomic Energy Agency to carry out such activities.

(2) Subject to subsection (3), in this section “United Nations operation” means an operation—

- (a) which is established, in accordance with the Charter of the United Nations, by an organ of the United Nations,



- (b) which is conducted under the authority and control of the United Nations, and
  - (c) which—
    - (i) has as its purpose the maintenance or restoration of international peace and security, or
    - (ii) has, for the purposes of the Convention, been declared by the Security Council or the General Assembly of the United Nations to be an operation where there exists an exceptional risk to the safety of the participating personnel.
- (3) In this section “United Nations operation” does not include any operation—
- (a) which is authorized by the Security Council of the United Nations as an enforcement action under Chapter VII of the Charter of the United Nations,
  - (b) in which United Nations workers are engaged as combatants against organized armed forces, and
  - (c) to which the law of international armed conflict applies.
- (4) In this section—
- “the Convention” means the Convention on the Safety of United Nations and Associated Personnel adopted by the General Assembly of the United Nations on 9 December 1994; and
- “specialized agency” has the meaning assigned to it by Article 57 of the Charter of the United Nations.
- (5) If, in any proceedings, a question arises as to whether—
- (a) a person is or was a United Nations worker, or
  - (b) an operation is or was a United Nations operation,
- a certificate issued by or under the authority of the Secretary of State and stating any fact relating to the question shall be conclusive evidence of that fact.
- 5.—(1) Proceedings for an offence which (disregarding the provisions of the Internationally Protected Persons Act 1978, the Suppression of Terrorism Act 1978 and the Nuclear Material (Offences) Act 1983) would not be an offence apart from section 1, 2 or 3 above shall not be begun—
- (a) in England and Wales, except by or with the consent of the Attorney General;
  - (b) in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.
- (2) Without prejudice to any jurisdiction exercisable apart from this subsection, every sheriff court in Scotland shall have jurisdiction to entertain proceedings for an offence which (disregarding the provisions of the Internationally Protected Persons Act 1978, the Suppression of Terrorism Act 1978 and the Nuclear Material (Offences) Act 1983) would not be an offence in Scotland apart from section 1, 2 or 3 above.
- (3) A person is guilty of an offence under, or by virtue of, section 1, 2 or 3 regardless of his nationality.

(4) For the purposes of those sections, it is immaterial whether a person knows that another person is a United Nations worker.

6.—(1) The offences to which an Order in Council under section 2 of the Extradition Act 1870 can apply shall include offences under section 3 of this Act.

(2) In section 22 of the Extradition Act 1989 (extension of purposes of extradition for offences under Acts giving effect to international Conventions)—

(a) in subsection (2), after paragraph (k) there shall be inserted—

“(l) the Convention on the Safety of United Nations and Associated Personnel adopted by the General Assembly of the United Nations on 9 December 1994 (“the United Nations Personnel Convention”).”, and

(b) in subsection (4), after paragraph (k) there shall be inserted—

“(l) in relation to the United Nations Personnel Convention—

(i) an offence mentioned in section 1(2) of the United Nations Personnel Act 1997 which is committed against a United Nations worker within the meaning of that Act;

(ii) an offence mentioned in subsection (2) of section 2 of that Act which is committed in connection with such an attack as is mentioned in subsection (1) of that section; and

(iii) an offence under section 3 of that Act.”

(3) In Schedule 1 to that Act (provisions deriving from Extradition Act 1870 and associated enactments), in paragraph 15 (deemed extension of jurisdiction of foreign States), after paragraph (m) there shall be inserted—

“; or

(n) an offence mentioned in section 1(2) of the United Nations Personnel Act 1997 which is committed against a United Nations worker within the meaning of that Act; or

(o) an offence mentioned in subsection (2) of section 2 of that Act which is committed in connection with such an attack as is mentioned in subsection (1) of that section;

(p) an offence under section 3 of that Act;

(q) an attempt to commit an offence mentioned in paragraph (n), (o) or (p).”.

7.—The Schedule to this Act (consequential amendments) shall have effect.

8.—In this Act—

“act” includes omission; and

“United Nations worker” has the meaning given in section 4.

9.—(1) This Act extends to Northern Ireland.

(2) Her Majesty may by Order in Council make provision for extending any of the provisions of this Act, with such exceptions, adaptations or modifications as may be specified in the Order, to any of the Channel Islands, the Isle of Man or any colony.

10.—(1) This Act may be cited as the United Nations Personnel Act 1997.

(2) This Act shall come into force at the end of the period of two months beginning with the day on which it is passed.

## SCHEDULE

### CONSEQUENTIAL AMENDMENTS

#### *Visiting Forces Act 1952 (c. 67)*

1.—(1) The Schedule to the Visiting Forces Act 1952 (which specifies the offences which are offences against the person and against property for the purposes of section 3 of that Act) shall be amended as follows.

(2) In paragraph 1, after subparagraph (d) there shall be inserted—

“(e) an offence of making such a threat as is mentioned in section 3 of the United Nations Personnel Act 1997 and any of the following offences against a United Nations worker within the meaning of that Act—

- (i) an offence of kidnapping;
- (ii) an offence of false imprisonment;
- (iii) an offence under section 2 of the Explosive Substances Act 1883 of causing an explosion likely to endanger life.”;

(3) In paragraph 2, after subparagraph (d) there shall be inserted—

“(e) an offence of making such a threat as is mentioned in section 3 of the United Nations Personnel Act 1997 and an offence of causing an explosion likely to endanger life, committed against a United Nations worker (within the meaning of that Act), under section 2 of the Explosive Substances Act 1883.”;

(4) In paragraph 3, after subparagraph (k) there shall be inserted—

“(l) an offence under section 2 of the Explosive Substances Act 1883 of causing an explosion likely to cause serious injury to property in connection with such an attack as is mentioned in section 2(1) of the United Nations Personnel Act 1997.”;

(5) In paragraph 4, after subparagraph (d) there shall be inserted—

“(e) any of the following offences in connection with such an attack as is mentioned in section 2(1) of the United Nations Personnel Act 1997—

- (i) an offence of wilful fire-raising;
- (ii) an offence under section 2 of the Explosive Substances Act 1883 of causing an explosion likely to cause serious injury to property.”.

#### *Internationally Protected Persons Act 1978 (c. 17)*

2. In section 2 of the Internationally Protected Persons Act 1978 (supplementary provision about proceedings for offences under that Act), in subsections (1) and (2) for “and the Nuclear Material (Offences) Act 1983” there shall be sub-

stituted “, the Nuclear Material (Offences) Act 1983 and the United Nations Personnel Act 1997”.

*Suppression of Terrorism Act 1978 (c. 26)*

3. In section 4 of the Suppression of Terrorism Act 1978 (jurisdiction in respect of certain offences committed outside the United Kingdom), in subsections (4) and (5) for “and the Nuclear Material (Offences) Act 1983” there shall be substituted “, the Nuclear Material (Offences) Act 1983 and the United Nations Personnel Act 1997”.

*Nuclear Material (Offences) Act 1983 (c. 18)*

4. In section 3 of the Nuclear Material (Offences) Act 1983 (supplementary provision about proceedings for offences under that Act), in subsections (1) and (2) for “and the Suppression of Terrorism Act 1978” there shall be substituted “, the Suppression of Terrorism Act 1978 and the United Nations Personnel Act 1997”.

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## **2. Uzbekistan**

### **(a) Taxation Code adopted on 24 April 1997<sup>3</sup>**

#### *Article 35*

##### **SPECIAL CHARACTERISTICS OF TAXATION OF FOREIGN BODIES CORPORATE (EXCERPT)**

Foreign bodies corporate shall be liable to taxation in the territory of the Republic of Uzbekistan in accordance with this Code, taking into account the special characteristics established by the international agreements of the Republic of Uzbekistan.

This article contains a reference to the international agreements adopted by the Republic of Uzbekistan. These agreements are understood to include the Vienna Convention on Diplomatic Relations of 1961, ratified by the Republic of Uzbekistan, which contains provisions on diplomatic privileges and immunities.

#### *Article 59*

##### **EXEMPTION OF INDIVIDUALS FROM PAYMENT OF INCOME TAX (EXCERPT)**

1. The following individuals shall be fully exempt from payment of income tax:

(a) Heads and members of the staff of diplomatic missions and officials of consular posts of foreign States and members of their families forming part of their households, provided that they are not nationals of the Republic of

Uzbekistan, in respect of all income except income derived from sources in the Republic of Uzbekistan and not connected with diplomatic or consular service;

(b) Members of the administrative and technical staff of diplomatic missions and consular posts of foreign States and members of their families forming part of their households, provided that they are not nationals of or permanently resident in the Republic of Uzbekistan, in respect of all income except income derived from sources in the Republic of Uzbekistan and not connected with diplomatic or consular service;

(c) Members of the service staff of diplomatic missions and consular posts of foreign States, provided that they are not nationals of or permanently resident in the Republic of Uzbekistan, in respect of all income received by them for their services;

(d) Servants of members of diplomatic missions and consular posts of foreign States, provided that they are not nationals of or permanently resident in the Republic of Uzbekistan, in respect of all income received by them for their services;

(e) Officials of international non-governmental organizations in respect of income received by them in those organizations, provided that they are not nationals of the Republic of Uzbekistan.

The content of article 59 (paras. (a), (b), (c), (d) and (e)) reflects that of article VI (section 19) of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations (1947), which has been ratified by the Republic of Uzbekistan.

However, it must be noted that there is no reference in chapters 28 and 31 of the Taxation Code of the Republic of Uzbekistan, which deals with taxes on property and land, to the immunity from taxation of diplomatic missions, with which the United Nations and its specialized agencies are equated.

The Customs Code of the Republic of Uzbekistan was adopted in December 1997. Section VII of the Code (Customs benefits granted to various categories of foreign nationals) contains chapters 12 and 13.

(b) Customs Code adopted on 26 December 1997<sup>4</sup>

## CHAPTER 12

### CUSTOMS BENEFITS GRANTED TO MISSIONS OF FOREIGN STATES AND THEIR EMPLOYEES

#### *Article 117*

#### CUSTOMS BENEFITS GRANTED TO DIPLOMATIC MISSIONS OF FOREIGN STATES

Diplomatic missions of foreign States in the territory of the Republic of Uzbekistan may, subject to compliance with the procedure established for the transit of goods across the customs border, import into the Republic of Uzbekistan and export from the Republic of Uzbekistan goods intended for the

official use of the mission or post free of customs payments, with the exception of charges for storage and for processing such goods at locations other than those designated for that purpose or outside the working hours of the customs service.

#### *Article 118*

##### CUSTOMS BENEFITS GRANTED TO DIPLOMATIC AGENTS OF DIPLOMATIC MISSIONS OF FOREIGN STATES

Subject to compliance with the procedure established for the transit of goods across the customs border, diplomatic agents of diplomatic missions (the head and members of the diplomatic staff) and members of their families forming part of their households, provided that they are not nationals of the Republic of Uzbekistan, may import into the Republic of Uzbekistan goods intended for their personal use, including goods intended for their establishment, and export from the Republic of Uzbekistan goods intended for their personal use free of customs payments, with the exception of charges for storage and for processing such goods at locations other than those designated for that purpose or outside the working hours of the customs service.

The personal baggage of the aforementioned persons shall be exempt from customs inspection, unless there are sufficient grounds for presuming that it contains goods not intended for personal use or goods the import or export of which is prohibited by the law or by international agreements, or controlled by quarantine or other special regulations. Such inspection shall be conducted in the presence of the diplomatic agent or his or her authorized representative.

#### *Article 119*

##### CUSTOMS BENEFITS GRANTED TO ADMINISTRATIVE AND TECHNICAL STAFF OF DIPLOMATIC MISSIONS OF FOREIGN STATES

Administrative and technical staff of diplomatic missions of foreign States and members of their families forming part of their households, provided that they are not nationals of or permanently resident in the Republic of Uzbekistan, may import into the Republic of Uzbekistan goods intended for their establishment free of customs payments, with the exception of charges for storage and for processing such goods at locations other than those designated for that purpose or outside the working hours of the customs service.

#### *Article 120*

##### EXTENSION TO THE ADMINISTRATIVE AND TECHNICAL STAFF AND THE SERVICE STAFF OF DIPLOMATIC MISSIONS OF FOREIGN STATES OF THE CUSTOMS BENEFITS GRANTED TO DIPLOMATIC AGENTS

On the basis of special agreements with each foreign State and proceeding from the principle of reciprocity in relations with them, the customs benefits granted to diplomatic agents under article 118 of this Code may be extended to the administrative and technical staff and the service staff of diplomatic missions of foreign States and to members of their families, provided that they are not nationals of or permanently resident in the Republic of Uzbekistan.

### *Article 122*

#### TRANSIT OF THE DIPLOMATIC AND CONSULAR BAGS OF FOREIGN STATES ACROSS THE CUSTOMS BORDER

The packages constituting the diplomatic or consular bag must bear visible external marks of their character.

The diplomatic or consular bag of foreign States in transit across the customs border of the Republic of Uzbekistan shall not be opened or detained. If there are serious grounds for presuming that the consular bag contains articles other than those indicated in part 3 of this article, the customs service shall have the right to request that the consular bag be opened by the authorized representatives of the sending State in the presence of officers of the customs service of the Republic of Uzbekistan. If the request is refused, the consular bag shall be returned to its place of origin.

### CHAPTER 13

#### CUSTOMS BENEFITS GRANTED TO OTHER FOREIGN NATIONALS

### *Article 123*

#### CUSTOMS BENEFITS GRANTED TO DIPLOMATIC AND CONSULAR COURIERS OF FOREIGN STATES

Diplomatic and consular couriers of foreign States may, on the basis of mutual agreement, import into the Republic of Uzbekistan and export from it goods intended for their personal use without customs inspection and free of customs payments, with the exception of charges for storage and for processing such goods at locations other than those designated for that purpose or outside the working hours of the customs service.

### *Article 124*

#### CUSTOMS BENEFITS GRANTED TO REPRESENTATIVES AND MEMBERS OF DELEGATIONS OF FOREIGN STATES

Representatives of foreign States, members of parliamentary and government delegations and, on the basis of mutual agreement, employees of delegations of foreign States entering the Republic of Uzbekistan in order to participate in intergovernmental negotiations, international conferences and meetings or on other official business shall be granted the customs benefits stipulated in this section for diplomatic agents of the diplomatic missions of foreign States. The same benefits shall be granted to family members accompanying the aforementioned persons.

### *Article 125*

#### CUSTOMS BENEFITS GRANTED TO DIPLOMATIC AGENTS, CONSULAR OFFICERS, REPRESENTATIVES OF FOREIGN STATES AND MEMBERS OF DELEGATIONS TRAVELLING IN TRANSIT ACROSS THE CUSTOMS TERRITORY

Diplomatic agents and consular officers of foreign States, members of their families and persons referred to in article 124 of this Code travelling in transit across the customs territory of the Republic of Uzbekistan shall be granted the customs benefits stipulated for diplomatic agents of diplomatic missions of foreign States.

### *Article 126*

#### CUSTOMS BENEFITS GRANTED TO INTERNATIONAL INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS, MISSIONS OF FOREIGN STATES TO SUCH ORGANIZATIONS AND THEIR STAFF

The customs benefits granted to international intergovernmental and non-governmental organizations, missions of foreign States to such organizations and staff of such organizations and missions and members of their families are defined in the international agreements of the Republic of Uzbekistan.

The articles of the Customs Code of the Republic of Uzbekistan cited above fully reflect the customs privileges stipulated in the international agreements signed by the Republic of Uzbekistan.

Many matters relating to diplomatic immunities and privileges are dealt with in the large body of subsidiary legislation of the Republic of Uzbekistan (Ministry of Internal Affairs, National Security Council, Ministry of Foreign Affairs, Customs Committee, Taxation Committee, etc.).

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#### NOTES

<sup>1</sup>Published in the United Kingdom by Her Majesty's Stationery Office Limited, 1997.

<sup>2</sup>Published in the United Kingdom by Her Majesty's Stationery Office Limited, 1997.

<sup>3</sup>Translation prepared by the United Nations Secretariat on the basis of a Russian version provided by the Permanent Mission of Uzbekistan to the United Nations.

<sup>4</sup>Translation prepared by the United Nations Secretariat on the basis of a Russian version provided by the Permanent Mission of Uzbekistan to the United Nations.



## **Chapter II**

### **TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOV- ERNMENTAL ORGANIZATIONS**

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

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

As at 31 December 1997, there were 137 States parties to the Convention.<sup>2</sup>

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

- (a) Exchange of letters between the United Nations and the Government of India, constituting an agreement concerning the United Nations/European Space Agency Workshop on Satellite Communications in cooperation with the Centre for Space Science and Technology Education for Asia and the Pacific, to be held in Ahmedabad, India, from 20 to 24 January 1997. Vienna, 16 and 17 January 1997<sup>3</sup>

#### **I**

##### **LETTER FROM THE UNITED NATIONS**

16 January 1997

I wish to express the gratitude of the United Nations to the Government of India for its decision to host the aforementioned Workshop. The Workshop is being organized in cooperation with the Centre for Space Science and Technology Education for Asia and the Pacific (the Centre). This Workshop is being organized to provide participants an opportunity to thoroughly examine the developments in current and future technologies in satellite communications. As you are aware, participants in this Workshop shall also include the participants attending the nine-month education programme of the Centre on communication technology scheduled to begin following the conclusion of this Workshop.

In accordance with established practice, I should be grateful to receive your Government's acceptance of the following arrangements regarding the services to be provided for the Workshop to be held at the Centre.

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

1. The United Nations and the European Space Agency shall provide round-trip international air travel (economy class) to Ahmedabad, India, for those participants in need among nominees from developing countries that are invited to participate in the Workshop by the United Nations.

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.

### *B. Language and participation*

1. The total number of participants will be limited to a maximum of forty.

2. The official language of the Workshop will be English.

### *C. Government of India*

1. The Government in cooperation with the Centre for Space Science and Technology Education for Asia and the Pacific will act as host to the Workshop which will be held at the Centre in Ahmedabad.

2. The Government will also designate an official of the Centre as officer for liaison with the United Nations who will make the necessary arrangements concerning the contributions described in the following paragraph.

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

(a) Room and board for up to 40 participants from developing countries;

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

(c) Appropriate premises for the offices and for the other working areas of the United Nations Secretariat staff responsible for the Workshop, the liaison officer and the local personnel mentioned below;

(d) Adequate furniture and equipment for the premises referred to in (b) and (c) above to be installed prior to the start of the Workshop and maintained in good repair by appropriate personnel for the duration of the Workshop;

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

(f) The local administrative personnel required for the proper conduct of the Workshop, including reproduction and distribution of lectures and other documents in connection with the Workshop;

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

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

(i) All official transportation within India for all participants at the Workshop;

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

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

(l) Arrangements of adequate accommodations in hotels at reasonable commercial rates for persons other than those identified in (a) above and who are participating in, attending or servicing the Workshop, at the expense of these same persons;

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

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

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

#### *D. Privileges and immunities*

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

1. (a) The Convention on the Privileges and Immunities of the United Nations (1946) ratified by India on 13 May 1948 shall be applicable in respect of the Workshop. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Workshop shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies (1947).

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

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

2. All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from India. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Workshop, visas shall be granted not later than two weeks before the opening of the Workshop. If the

application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening.

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

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

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

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 India regarding the provision of host facilities by your Government for the Workshop.

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

## II

### LETTER FROM THE PERMANENT REPRESENTATIVE OF INDIA TO THE UNITED NATIONS AT VIENNA

17 January 1997

My dear Director-General,

I have the honour to acknowledge the receipt of your letter of 16 January 1997, addressed to Ambassador of India H.E. Mr. Kiran Kumar Doshi regarding the subject mentioned above.

I would like to confirm the Government of India's clearance for the holding of the above-mentioned workshop and its concurrence to the agreement sent by you vide your aforementioned letter containing provision of the host facilities.

(Signed) Dr. Ashok K. AMROHI  
Chargé d'affaires a.i.

- (b) Agreement concerning the relationship between the United Nations and the International Seabed Authority. Signed at New York on 14 March 1997<sup>4</sup>

*The United Nations and the International Seabed Authority,*

*Bearing in mind* that the General Assembly of the United Nations in its resolution 3067 (XXVIII) of 16 November 1973 decided to convene the Third United Nations Conference on the Law of the Sea for the adoption of a convention dealing with all matters relating to the law of the sea and that the Conference adopted the United Nations Convention on the Law of the Sea, which, inter alia, establishes the International Seabed Authority,

*Recalling* that the General Assembly of the United Nations in its resolution 48/263 of 28 July 1994 adopted the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982,

*Mindful* of the entry into force of the United Nations Convention on the Law of the Sea on 16 November 1994 and the entry into force of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 on 28 July 1996,

*Noting* General Assembly resolution 51/6 of 4 November 1996 inviting the International Seabed Authority to participate in the deliberations of the General Assembly in the capacity of observer,

*Noting further* article 162, paragraph 2(f), of the United Nations Convention on the Law of the Sea of 10 December 1982, General Assembly resolution 51/34 of 9 December 1996 and decision ISBA/C/10 of 12 August 1996 of the Council of the International Seabed Authority calling for the conclusion of a relationship agreement between the United Nations and the International Seabed Authority,

*Desiring* to make provision for an effective system of mutually beneficial relationship whereby the discharge of their respective responsibilities may be facilitated,

*Taking into account* for this purpose the provisions of the Charter of the United Nations, the provisions of the United Nations Convention on the Law of the Sea and the provisions of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982,

*Have agreed* as follows:

## *Article 1*

### PURPOSE OF THE AGREEMENT

This Agreement, which is entered into by the United Nations and the International Seabed Authority (hereinafter referred to as "the Authority"), pursuant to the provisions of the Charter of the United Nations (hereinafter referred to as "the Charter") and the provisions of the United Nations Convention on the Law of the Sea (hereinafter referred to as "the Convention") and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter referred to as "the Agreement") respectively, is intended to define the terms on which the United Nations and the Authority shall be brought into relationship.

## *Article 2*

### PRINCIPLES

1. The United Nations recognizes the Authority as the organization through which States Parties to the Convention shall, in accordance with Part XI of the Convention and the Agreement, organize and control activities in the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as "the Area"), particularly with a view to administering the resources of the Area. The United Nations undertakes to conduct its activities in such a manner as to promote the legal order for the seas and oceans established by the Convention and the Agreement.

2. The United Nations recognizes that the Authority, by virtue of the Convention and the Agreement, shall function as an autonomous international organization in the working relationship with the United Nations established by this Agreement.

3. The Authority recognizes the responsibilities of the United Nations under the Charter and other international instruments, in particular in the fields of international peace and security and economic, social, cultural and humanitarian development, protection and preservation of the environment.

4. The Authority undertakes to conduct its activities in accordance with the purposes and principles of the Charter to promote peace and international cooperation and in conformity with the policies of the United Nations furthering these purposes and principles.

## *Article 3*

### COOPERATION AND COORDINATION

1. The United Nations and the Authority recognize the desirability of achieving effective coordination of the activities of the Authority with those of the United Nations and the specialized agencies, and of avoiding unnecessary duplication of activities.

2. The United Nations and the Authority agree that, with a view to facilitating the effective discharge of their respective responsibilities, they will cooperate closely with each other and consult each other on matters of mutual interest.

#### *Article 4*

##### ASSISTANCE TO THE SECURITY COUNCIL

1. The Authority shall cooperate with the Security Council by providing to it at its request such information and assistance as may be required in the exercise of its responsibility for the maintenance or restoration of international peace and security. In case confidential information is provided, the Security Council shall preserve its confidential character.

2. At the invitation of the Security Council, the Secretary-General of the Authority may attend its meetings to supply it with information or give it other assistance with regard to matters within the competence of the Authority.

#### *Article 5*

##### INTERNATIONAL COURT OF JUSTICE

The Authority agrees, subject to the provisions of this Agreement relating to the safeguarding of confidential material, data and information, to provide any information which may be requested by the International Court of Justice in accordance with the Statute of that Court.

#### *Article 6*

##### RECIPROCAL REPRESENTATION

1. Without prejudice to the decision of the General Assembly in resolution 51/6 of 4 November 1996 granting observer status to the Authority, and subject to such decisions as may be taken concerning the attendance of their meetings by observers, the United Nations shall, subject to the rules of procedure and practice of the bodies concerned, invite the Authority to send representatives to meetings and conferences of other competent bodies, whenever matters of interest to the Authority are discussed.

2. Subject to such decisions as may be taken by its competent bodies concerning the attendance of their meetings by observers, the Authority shall, subject to the rules of procedure and practice of the bodies concerned, invite the United Nations to send representatives to all its meetings and conferences, whenever matters of interest to the United Nations are discussed.

3. Written statements submitted by the United Nations to the Authority for distribution shall be distributed by the Secretariat of the Authority to all members of the appropriate organ or organs of the Authority in accordance with the relevant rules of procedure. Written statements presented by the Authority to the United Nations for distribution shall be distributed by the Secretariat of the United Nations to all members of the appropriate organ or organs of the United Nations in accordance with the relevant rules of procedure. Such written statements will be circulated in the quantities and languages in which they were made available to the respective Secretariat.

## *Article 7*

### COOPERATION BETWEEN THE TWO SECRETARIATS

The Secretary-General of the United Nations and the Secretary-General of the Authority shall consult from time to time regarding the implementation of their respective responsibilities under the Convention and the Agreement. They shall consult, in particular, regarding such administrative arrangements as may be necessary to enable the two organizations effectively to carry out their functions and to ensure effective cooperation and liaison between their Secretariats.

## *Article 8*

### EXCHANGE OF INFORMATION, DATA AND DOCUMENTS

1. The United Nations and the Authority shall arrange for the exchange of information, publications and reports of mutual interest.

2. In fulfilment of the responsibilities entrusted to him under article 319, subparagraphs 1(a) and (b), of the Convention and assumed by him pursuant to General Assembly resolution 37/66 of 3 December 1982, the Secretary-General of the United Nations shall report to the Authority from time to time on issues of a general nature that have arisen with respect to the Convention and shall regularly notify the Authority of ratifications and formal confirmations of and accessions to the Convention and amendments thereto, as well as of denunciations of the Convention.

3. The United Nations and the Authority shall cooperate in obtaining from States Parties to the Convention copies of charts or lists of geographical coordinates of the outer limit lines of their continental shelf as referred to in article 84 of the Convention. They will exchange copies of such lists of coordinates or, to the extent practicable, charts.

4. Where the outer limits of the national jurisdiction of a State Party are defined by the outer limit of the exclusive economic zone, the United Nations shall provide to the Authority copies of such lists of geographical coordinates or, to the extent practicable, charts, indicating the outer limit lines of the exclusive economic zone of such State Party as may be deposited with the Secretary-General of the United Nations pursuant to article 75, paragraph 2, of the Convention.

5. The Authority, to the extent practicable, shall furnish special studies or information requested by the United Nations. The submission of such reports, studies and information shall be subject to conditions set forth in article 14.

6. The United Nations and the Authority are subject to necessary limitations for the safeguarding of confidential material, data and information furnished to them by their members or others. Subject to article 4, paragraph 1, nothing in this Agreement shall be construed to require either the United Nations or the Authority to furnish any material, data and information the furnishing of which could, in its judgement, constitute a violation of the confidence of any of its members or anyone from whom it shall have received such information, or which would otherwise interfere with the orderly conduct of its operation.



## *Article 9*

### STATISTICAL SERVICES

The United Nations and the Authority, recognizing the desirability of maximum cooperation in the statistical field and of minimizing the burdens placed on governments and other organizations from which information may be collected, undertake to avoid undesirable duplication between them with respect to the collection, analysis and publication of statistics, and agree to consult with each other on the most efficient use of resources and of technical personnel in the field of statistics.

## *Article 10*

### TECHNICAL ASSISTANCE

The United Nations and the Authority undertake to work together in the provision of technical assistance in the fields of marine scientific research in the Area, transfer of technology and the prevention, reduction and control of pollution of the marine environment from activities in the Area. In particular, they agree to take such measures as may be necessary to achieve effective coordination of their technical assistance activities within the framework of existing coordinating machinery in the field of technical assistance, taking into account the respective roles and responsibilities of the United Nations and the Authority under their constitutive instruments, as well as those of other organizations participating in technical assistance activities.

## *Article 11*

### PERSONNEL ARRANGEMENTS

1. The United Nations and the Authority agree to apply, in the interests of uniform standards of international employment and to the extent feasible, common personnel standards, methods and arrangements designed to avoid unjustified differences in terms and conditions of employment and to facilitate interchange of personnel in order to obtain the maximum benefit from their services.

2. To this end, the United Nations and the Authority agree:

(a) To consult together from time to time concerning matters of common interest relating to the terms and conditions of employment of the officers and staff, with a view to securing as much uniformity in these matters as may be feasible;

(b) To cooperate in the interchange of personnel, when desirable, on a temporary or a permanent basis, making due provision for the retention of seniority and pension rights;

(c) To cooperate in the establishment and operation of suitable machinery for the settlement of disputes arising in connection with the employment of personnel and related matters.

3. Pursuant to decision ISBA/A/15 of 15 August 1996 of the Assembly of the International Seabed Authority, and upon the approval of the General Assembly of the United Nations, the Authority shall participate in the United Nations Joint Staff Pension Fund in accordance with the Regulations of the Fund and shall

accept the jurisdiction of the United Nations Administrative Tribunal in matters involving applications alleging non-observance of those Regulations.

4. The terms and conditions on which any facilities or services of the Authority or the United Nations in connection with the matters referred to in this article are to be extended to the other shall, where necessary, be the subject of supplementary arrangements concluded for this purpose.

### *Article 12*

#### CONFERENCE SERVICES

1. Unless the General Assembly of the United Nations, after giving reasonable notice to the Authority, decides otherwise, the United Nations will make available to the Authority, on a reimbursable basis, such facilities and services as may be required for the meetings of the Authority, including translation and interpretation services, documentation and conference services.

2. The terms and conditions on which any facilities or services of the United Nations in connection with the matters referred to in this article may be extended to the Authority shall, where necessary, be the subject of separate arrangements concluded for this purpose.

### *Article 13*

#### BUDGETARY AND FINANCIAL MATTERS

The Authority recognizes the desirability of establishing close budgetary and financial cooperation with the United Nations aimed at benefiting from the experience of the United Nations in this field.

### *Article 14*

#### FINANCING OF SERVICES

The costs and expenses resulting from the provision of services pursuant to this Agreement shall be the subject of separate arrangements between the Authority and the United Nations.

### *Article 15*

#### UNITED NATIONS LAISSEZ-PASSER

Without prejudice to the right of the Authority to issue its own travel documents, officials of the Authority shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General of the United Nations and the Secretary-General of the Authority, to use the laissez-passer of the United Nations as a valid travel document where such use is recognized under the Protocol on the Privileges and Immunities of the International Seabed Authority or other agreements defining the privileges and immunities of the Authority.

## Article 16

### IMPLEMENTATION OF THE AGREEMENT

The Secretary-General of the United Nations and the Secretary-General of the Authority may enter into such supplementary arrangements for the implementation of this Agreement as may be found desirable.

## Article 17

### AMENDMENTS

This Agreement may be amended by agreement between the United Nations and the Authority. Any such amendment agreed upon shall enter into force on its approval by the General Assembly of the United Nations and the Assembly of the Authority.

## Article 18

### ENTRY INTO FORCE

1. This Agreement shall enter into force on its approval by the General Assembly of the United Nations and the Assembly of the Authority.

2. This Agreement shall be applied provisionally by the United Nations and the Authority upon signature by the Secretary-General of the United Nations and the Secretary-General of the Authority.

IN WITNESS THEREOF the undersigned, being duly authorized representatives of the United Nations and the International Seabed Authority, have signed the present agreement.

SIGNED this 14th day of March 1997 at \_\_\_\_\_ in two originals in the English language.

FOR THE UNITED NATIONS:  
(Signed) Kofi A. ANNAN  
Secretary-General

FOR THE INTERNATIONAL  
SEABED AUTHORITY:  
(Signed) Satya N. NANDAN  
Secretary-General

- (c) Exchange of letters between the United Nations and the Government of Antigua and Barbuda, constituting an agreement concerning the International Decade for the Eradication of Colonialism, to be held in St. John's, Antigua and Barbuda, from 21 to 23 May 1997. New York, 4 and 17 April 1997<sup>5</sup>

## I

### LETTER FROM THE UNITED NATIONS

Excellency,

I have the honour to refer to the arrangements for the Caribbean Regional Seminar in accordance with the Plan of Action concerning the International Decade for the Eradication of Colonialism, to be organized by the Special Committee

on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at the Royal Antigua Hotel, St. John's, Antigua and Barbuda, from 21 to 23 May 1997. With the present letter, I wish to obtain your Government's acceptance of the following arrangements:

1. The Seminar will be attended by approximately 60 participants, including members of the Special Committee of 24, representatives of the administering Powers, of United Nations bodies, international organizations, of the peoples of Non-Self-Governing Territories, experts, representatives of non-governmental organizations and observers, and assisted by approximately five United Nations staff members.

2. The Government of Antigua and Barbuda will assign one (1) protocol officer to assist in the planning and coordination of the Seminar.

3. *Entry visa*

The Government of Antigua and Barbuda, through its Immigration Division, will assign officers to provide entry visas to the participants upon their arrival at Vere C. Bird International Airport and to facilitate their processing through customs.

4. *Premises for the Seminar*

The Government of Antigua and Barbuda will assist the United Nations in making the arrangements for conference hall facilities and equipment.

5. *Communication equipment*

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

6. *Office equipment*

The Government of Antigua and Barbuda, in cooperation with the office of the United Nations Development Programme (UNDP) in Barbados, will make arrangements with private companies to hire office equipment needed for the conduct of the Seminar.

7. *Accommodation*

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

8. *Transportation*

The Government of Antigua and Barbuda will, as a matter of courtesy, provide two (2) VIP cars and one (1) 25-seater bus for use of the delegations, participants and officials on arrivals and departures to and from the airport to the hotel as well as other official use as appropriate.

9. *Liaison officers*

The Government of Antigua and Barbuda will provide six (6) Foreign Service trainees as liaison officers to the Seminar and as guides to delegations and participants.

#### 10. *Local support staff*

The Government of Antigua and Barbuda will provide the following ten (10) support staff to the Seminar:

- (i) Three (3) secretaries;
- (ii) Three (3) administrative assistants; and
- (iii) Four (4) machine operators.

The United Nations will meet the cost of overtime of the above staff where necessary.

#### 11. *Security*

The security coverage for the Seminar will be the responsibility of the Government of Antigua and Barbuda in conjunction with Royal Antigua Hotel.

#### 12. *Medical facilities*

The Government of Antigua and Barbuda will be responsible for making arrangements for medical treatment and admission to a hospital to be provided for Seminar participants should this be necessary.

#### 13. *Tax exemption*

The Government of Antigua and Barbuda shall exempt United Nations personnel, holders of diplomatic passports and special invitees/guests from the airport departure tax.

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

- (a) (i) The Convention on the Privileges and Immunities of the United Nations of 1946 shall be applicable in respect of the Seminar. Representatives of non-governmental organizations and inter-governmental organizations shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in connection with their participation in the Seminar. The other participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Seminar shall enjoy the privileges and immunities provided under articles V and VII of the Convention on the Privileges and Immunities of the United Nations.
- (ii) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar.
- (iii) Personnel provided or arranged by the Government, pursuant to this Agreement, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Seminar.
- (b) All participants and all persons performing functions in connection with the Seminar shall have the right of unimpeded entry and exit from Antigua

and Barbuda. Visas and entry permits, where required, shall be granted free of charge and as promptly as possible.

(c) It is further understood that the Government of Antigua and Barbuda will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) death, injury to persons or damage to property in conference or office premises provided for the Seminar; (ii) death, injury or damage to persons or property occurring during use of the transportation referred to in paragraph 8 above; and (iii) the employment for the Seminar of personnel provided or arranged by your Government; and your Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand.

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

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

(Signed) Kieran PRENDERGAST  
Under-Secretary-General  
for Political Affairs

## II

### LETTER FROM THE PERMANENT REPRESENTATIVE OF ANTIGUA AND BARBUDA TO THE UNITED NATIONS

17 April 1997

Excellency,

The Government of Antigua and Barbuda has duly studied all aspects of your letter which was forwarded on 4 April 1997 and wishes to state that the Government of Antigua and Barbuda agrees with the provisions of the said letter. This exchange of letters shall constitute an agreement between the United Nations and

the Government of Antigua and Barbuda as a host country regarding the provisions for the Caribbean Regional Seminar.

Kindly accept, Excellency, the assurances of the highest consideration of the Permanent Mission of Antigua and Barbuda to the United Nations, which has been fully authorized to respond on behalf of the Government of Antigua and Barbuda.

(Signed) Patrick Albert LEWIS  
Ambassador Extraordinary  
and Plenipotentiary

- (d) Agreement between the International Tribunal for the Former Yugoslavia and the Government of Finland on the enforcement of sentences of the International Tribunal. Signed at The Hague on 7 May 1997<sup>6</sup>

*The United Nations*, acting through the International Criminal Tribunal for the Former Yugoslavia (hereinafter called "the International Tribunal"), and

*The Government of Finland* (for the purposes of this Agreement hereinafter called the "requested State"),

*Recalling* article 27 of the Statute of the International Tribunal annexed to Security Council resolution 827 (1993) of 25 May 1993, according to which imprisonment of persons sentenced by the International Tribunal shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons;

*Noting* the willingness of the requested State to enforce sentences imposed by the International Tribunal;

*Recalling* the provisions of the Standard Minimum Rules for the Treatment of Prisoners approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly in its resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners adopted by the General Assembly in its resolution 45/111 of 14 December 1990;

*In order* to give effect to the judgements and sentences of the International Tribunal;

*Have agreed* as follows:

### *Article 1*

#### PURPOSE AND SCOPE OF THE AGREEMENT

This Agreement shall regulate matters relating to or arising out of all requests to the requested State to enforce sentences imposed by the International Tribunal.

## *Article 2*

### PROCEDURE

1. A request to the Government of Finland (hereinafter: "the Government") to enforce a sentence shall be made by the Registrar of the International Tribunal (hereinafter: "the Registrar"), with the approval of the President of the International Tribunal.

2. The Registrar shall provide the following documents to the Government when making the request:

(a) A certified copy of the judgement;

(b) A statement indicating how much of the sentence has already been served, including information on any pre-trial detention;

(c) When appropriate, any medical or psychological reports on the convicted person, any recommendation for his further treatment in the requested State and any other factor relevant to the enforcement of the sentence.

3. The Government shall submit the request to the competent national authorities, in accordance with the national law of the requested State.

4. The competent national authorities of the requested State shall promptly decide upon the request of the Registrar, in accordance with national law.

## *Article 3*

### ENFORCEMENT

1. In enforcing the sentence pronounced by the International Tribunal, the competent national authorities of the requested State shall be bound by the duration of the sentence.

2. The conditions of imprisonment shall be governed by the law of the requested State, subject to the supervision of the International Tribunal, as provided for in articles 6 to 8 and paragraphs 2 and 3 of article 9 below.

3. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for early release, the Government shall notify the Registrar accordingly.

4. The President of the International Tribunal shall determine, in consultation with the judges of the International Tribunal, whether any early release is appropriate. The Registrar shall inform the Government of the President's determination. If the President determines that an early release is not appropriate, the Government shall act accordingly.

5. Conditions of imprisonment shall be compatible with the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners.



#### *Article 4*

##### TRANSFER OF THE CONVICTED PERSON

The Registrar shall make appropriate arrangements for the transfer of the convicted person from the International Tribunal to the competent authorities of the requested State. Prior to his transfer, the convicted person will be informed by the Registrar of the contents of this Agreement.

#### *Article 5*

##### *NON BIS IN IDEM*

The convicted person shall not be tried before a court of the requested State for acts constituting serious violations of international humanitarian law under the Statute of the International Tribunal, for which he has already been tried by the International Tribunal.

#### *Article 6*

##### INSPECTION

1. The competent authorities of the requested State shall allow the inspection of the conditions of detention and treatment of the prisoner(s) by the International Committee of the Red Cross (ICRC) at any time and on a periodic basis, the frequency of visits to be determined by ICRC. ICRC will submit a confidential report based on the findings of these inspections to the Government and to the President of the International Tribunal.

2. The Government and the President of the International Tribunal shall consult each other on the findings of the reports referred to in paragraph 1. The President of the International Tribunal may thereafter request the Government to report to him any changes in the conditions of detention suggested by ICRC.

#### *Article 7*

##### INFORMATION

1. The Government shall immediately notify the Registrar:

- (a) Two months prior to the completion of the sentence;
- (b) If the convicted person has escaped from custody before the sentence has been completed;
- (c) If the convicted person has deceased.

2. Notwithstanding the previous paragraph, the Registrar and the Government shall consult each other on all matters relating to the enforcement of the sentence upon the request of either party.

## *Article 8*

### PARDON AND COMMUTATION OF SENTENCES

1. If, pursuant to the applicable national law of the requested State, the convicted person is eligible for pardon or commutation of the sentence, the Government shall notify the Registrar accordingly.

2. The President of the International Tribunal shall determine, in consultation with the judges of the International Tribunal, whether pardon or commutation of the sentence is appropriate. The Registrar shall inform the Government of the President's determination. If the President determines that a pardon or commutation of the sentence is not appropriate, the Government shall act accordingly.

## *Article 9*

### TERMINATION OF ENFORCEMENT

1. The enforcement of the sentence shall cease:

(a) When the sentence has been completed;

(b) Upon the demise of the convicted;

(c) Upon the pardon of the convicted;

(d) Following a decision of the International Tribunal as referred to in paragraph 2.

2. The International Tribunal may at any time decide to request the termination of the enforcement in the requested State and transfer the convicted person to another State or to the International Tribunal.

3. The competent authorities of the requested State shall terminate the enforcement of the sentence as soon as it is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

## *Article 10*

### IMPOSSIBILITY TO ENFORCE SENTENCE

If, at any time after the decision has been taken to enforce the sentence, for any legal or practical reasons, further enforcement has become impossible, the Government shall promptly inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of the convicted person. The competent authorities of the requested State shall allow for at least sixty days following the notification of the Registrar before taking other measures on the matter.

## *Article 11*

### COSTS

The International Tribunal shall bear the expenses related to the transfer of the convicted person to and from the requested State, unless the parties agree otherwise. The requested State shall pay all other expenses incurred by the enforcement of the sentence.

## Article 12

### ENTRY INTO FORCE

This agreement shall enter into force on the thirtieth day following the date of signature of both parties.

## Article 13

### DURATION OF THE AGREEMENT

1. This Agreement shall remain in force as long as sentences of the International Tribunal are being enforced by the requested State under the terms and conditions of this Agreement.

2. Upon consultation, either party may terminate this Agreement, with two months' prior notice. This Agreement shall not be terminated before the sentences to which this Agreement applies have been completed or terminated and, if applicable, before the transfer of the convicted as provided for in article 10 has been effected.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

DONE at The Hague this 7th day of May 1997, in duplicate, in the English language.

FOR THE UNITED NATIONS:  
(Signed) Dorothee DE SAMPAYO  
GARRIDO-NIJGH  
Registrar  
International Criminal Tribunal  
for the Former Yugoslavia

FOR THE GOVERNMENT  
OF FINLAND:  
(Signed) H.E. Mrs. Tarja HALONEN  
Minister for Foreign Affairs

(e) Cooperation Agreement between the United Nations and the Caribbean Community. Signed at New York on 27 May 1997<sup>7</sup>

The Secretariat of the United Nations and the Caribbean Community (CARICOM) Secretariat:

*Recalling* that the purposes of the United Nations are, inter alia, to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms and to be a centre for harmonizing the actions of nations in the attainment of these common ends;

*Bearing in mind* that the Charter of the United Nations contemplates the existence of regional arrangements or agencies for dealing with such matters as are appropriate for regional action and other activities consistent with the purposes and principles of the United Nations;

*Considering* the provisions of the Treaty establishing the Caribbean Community which provide for the furthering of the integration movement through the establishment of the CARICOM Single Market and Economy in order to achieve sustained economic development, international competitiveness, coordinated economic and foreign policies, functional cooperation and enhanced trade and economic relations with other countries and to enhance the participation of their

peoples, and in particular the critical actors in the private sector and the social partners, in the integration movement;

*Acknowledging* that the Caribbean Community deals at the subregional level with activities which are consistent with the purposes and principles of the United Nations;

*Taking note* of resolutions adopted by the United Nations, in particular General Assembly resolutions 49/141 and 51/16 and those adopted by the Fifteenth Meeting of the Conference of Heads of Government of the Caribbean Community, from 4 to 7 July 1994, and the Twenty-second Meeting of the Standing Committee of Ministers responsible for Foreign Affairs, on 13 and 14 May 1996, calling for intensified cooperation between the two organizations;

*Desirous* of pursuing their efforts towards the achievement of common aims as identified in the present agreement,

*Have agreed* as follows:

### *Article I*

#### COOPERATION AND CONSULTATIONS

1. The Caribbean Community Secretariat and the Secretariat of the United Nations shall act in close collaboration and hold consultations regularly on matters of common interest.

2. To this end, the Parties shall develop the appropriate framework for such consultations as and when necessary.

### *Article II*

#### ATTENDANCE AT MEETINGS

1. Subject to the applicable rules of procedure and such decisions as may be taken by its competent bodies concerning the attendance of meetings by observers, the United Nations shall invite the Caribbean Community to be represented at meetings and conferences where observers are allowed, whenever matters of special interest to the Caribbean Community are to be discussed.

2. Subject to the applicable rules of procedure and such decisions as may be taken by its competent bodies concerning the attendance of meetings by observers, the Caribbean Community shall invite the United Nations to be represented at meetings and conferences where observers are allowed, whenever matters of special interest to the United Nations are to be discussed.

### *Article III*

#### EXCHANGE OF INFORMATION AND DOCUMENTATION

1. The Secretariat of the United Nations and the Caribbean Community Secretariat agree to exchange information and documentation in the public domain to the fullest extent possible on matters of common interest.

2. Where appropriate and subject to the necessary requirements, information and documentation relating to specific projects and programmes may also be exchanged between the Parties.

#### *Article IV*

##### STATISTICAL AND LEGAL INFORMATION

1. The United Nations and the Caribbean Community shall, subject to their respective rules and regulations, endeavour to make every effort possible to ensure optimum utilization of statistical and legal information, and efficient use of their resources to compile, analyse, publish and disseminate such information.

#### *Article V*

##### COOPERATION BETWEEN THE SECRETARIATS

1. The Secretary-General of the United Nations and the Secretary-General of the Caribbean Community shall take appropriate measures to ensure effective cooperation and liaison between the Secretariats of the two organizations.

2. Either organization may request the cooperation of the other whenever the latter organization is in a position to help develop the former's activities.

3. Each organization shall endeavour, insofar as possible and in compliance with its constituent instruments and decisions of its competent bodies, to respond favourably to such requests for cooperation in accordance with procedures to be mutually agreed upon.

4. Similarly, insofar as possible, and within the context of their constituent instruments and decisions of their respective competent bodies, the two organizations shall assist each other in the conduct of technical studies.

#### *Article VI*

##### IMPLEMENTATION OF THE AGREEMENT

1. The Secretariat of the United Nations and the Caribbean Community Secretariat shall consult each other regularly on matters relating to the implementation of this Agreement.

#### *Article VII*

##### SUPPLEMENTARY ARRANGEMENTS

The United Nations and the Caribbean Community may enter into such supplementary arrangements for the purpose of cooperation and coordination as may be found desirable.

#### *Article VIII*

##### ENTRY INTO FORCE, AMENDMENT AND DURATION

1. This Agreement shall enter into force on the date of its signature by the duly authorized representatives of the Secretariat of the United Nations and the Caribbean Community Secretariat.

2. This Agreement may be amended by mutual consent of the Parties. Any proposed amendment shall be made in writing to the other Party and shall enter

into force after a period of three months following the expression of such consent by the Party.

3. This Agreement may be terminated by either Party giving six months' written notice to the other Party of its intention to do so.

IN WITNESS WHEREOF, the undersigned representatives of the Secretariat of the United Nations and the Caribbean Community Secretariat have signed the present Agreement in duplicate in the English language.

Signed this 27th day of May 1997 at the United Nations Headquarters in New York.

FOR THE SECRETARIAT OF  
THE CARIBBEAN COMMUNITY:

(Signed) Edwin CARRINGTON  
Secretary-General

FOR THE UNITED NATIONS  
SECRETARIAT:

(Signed) Palitha KOHONA

- (f) Exchange of letters between the United Nations and the Government of Japan, constituting an agreement concerning arrangements regarding the United Nations Conference on Disarmament Issues entitled "New Agenda for Disarmament and International and Regional Security", to be held in Sapporo from 22 to 25 July 1997. Signed at New York on 8 July 1997<sup>8</sup>

# I

## LETTER FROM THE UNITED NATIONS

8 July 1997

Dear Ambassador,

I have the honour to inform you that a United Nations Conference on Disarmament Issues entitled "New Agenda for Disarmament and International and Regional Security" (hereinafter referred to as "the Conference") will be organized by the United Nations and will be held in Sapporo, Japan, from 22 to 25 July 1997.

The purpose of the Conference in Sapporo is to provide an informal setting for frank and open discussion of critical issues in the field of arms control, disarmament and confidence-building measures, with a view to addressing differences in approach, on the one hand, and, possibly, identifying common grounds for achieving further progress in the formal disarmament deliberating and negotiation forums, on the other.

Attendance at the Conference is open to participants invited by the United Nations in their personal capacity, and officials of the United Nations. The United Nations will, in due course, prior to the Conference, inform the Government of Japan (hereinafter referred to as "the Government") of the names and the numbers of participants as specified above.

Arrangements concerning the practical aspects relating to the organization of the Conference have been made with the Sapporo Receiving Committee.

With respect to the Conference, and without prejudice to discussions between the United Nations and the Government concerning general arrangements for the holding of United Nations meetings in Japan, I have the honour to propose the following arrangements.

### *1. Privileges and immunities*

(a) The Convention on the Privileges and Immunities of the United Nations approved by the General Assembly on 13 February 1946, to which Japan is a party, will be applicable with respect to the Conference. In particular, the above-mentioned officials of the United Nations performing functions in connection with the Conference will 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 will enjoy the privileges and immunities provided under articles VI and VII of the Convention.

(b) Without prejudice to the provisions of the above-mentioned Convention, all participants and persons performing functions for the United Nations in connection with the Conference and officials of the United Nations will enjoy such other facilities as are necessary for the independent exercise of their functions in connection with the Conference.

(c) All participants and persons performing functions for the United Nations in connection with the Conference and the officials of the United Nations will be permitted to enter into and exit from Japan, and be granted visas and entry permits, where required, free of charge and as promptly as possible in accordance with the Immigration Control and Refugee Recognition Act of Japan as currently in effect.

### *2. Police protection and tranquillity of premises*

It is expected that the Government will provide such police protection as is required to ensure the efficient functioning of the Conference in an atmosphere of security and tranquillity and free from interference of any kind. While such police services will be under the direct supervision and control of a senior officer provided by the Government, this officer will work in close cooperation with a designated senior official of the United Nations.

### *3. Settlement of disputes*

Any dispute between the United Nations and the Government concerning the interpretation or application of the present arrangements will be settled by negotiation or by other means to be agreed upon by the United Nations and the Government.

I should be grateful if you would let me know at your earliest convenience whether your Government has any objections to the foregoing arrangements.

(Signed) Kieran PRENDERGAST  
Under-Secretary-General  
for Political Affairs

## II

### LETTER FROM THE PERMANENT MISSION OF JAPAN

8 July 1997

Dear Mr. Prendergast,

I have the honour to acknowledge receipt of your letter dated 8 July concerning the United Nations Conference on Disarmament Issues in Sapporo.

I have further the honour to inform you that the Government of Japan has no objection to the arrangements set out in your letter of 8 July 1997.

(Signed) Masaki KONISHI  
Ambassador Extraordinary  
and Plenipotentiary

- (g) Cooperation Agreement between the United Nations and the International Criminal Police Organization. Signed at New York on 8 July 1997<sup>9</sup>

*The United Nations and the International Criminal Police Organization (Interpol),*

*Considering* the provisions of the Charter of the United Nations which call, inter alia, for the promotion of regional and international cooperation to solve political, economic and social problems and to ensure respect for human rights in the world,

*Bearing in mind* the goals of the United Nations in the field of crime prevention and criminal justice, which specifically include the reduction of crime, more efficient and effective law enforcement and administration of justice, respect for human rights and the promotion of the highest standards of fairness, humanity and professional conduct,

*Fully aware* of the role of the Commission on Crime Prevention and Criminal Justice as the principal policy-making body of the United Nations in crime prevention and criminal justice, as determined by the General Assembly in its resolution 46/152 of 18 December 1991 (annex) and the Economic and Social Council in its resolution 1992/22 of 30 July 1992,

*Recognizing* the functions of the Crime Prevention and Criminal Justice Division, which is the only office within the United Nations Secretariat with responsibilities in the field of crime prevention and criminal justice,

*Considering* the provisions of the Constitution of the International Criminal Police Organization, which provides that Interpol's aims are to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights, and to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes,

*Further noting* that under its Constitution it is strictly forbidden for Interpol to undertake any intervention or activities of political, military, religious or racial character,



*Recognizing* the importance of further strengthening the cooperation which has developed over the years between the United Nations and Interpol in the field of crime prevention and criminal justice,

*Considering* that it is essential, in order to improve efficiency and effectiveness and to prevent overlapping of activities and duplication of efforts, to develop more effective coordination in the field of crime prevention and the administration of justice between the organs and bodies of the United Nations and Interpol and to provide ways and means for such coordination,

*Taking into consideration* the specific methods and character of the activities of each organization as determined by their statutory objective, their mandates and the provisions of the relevant international instruments,

*Recalling* United Nations General Assembly resolution 51/1 of 15 October 1996, and Interpol General Assembly resolutions AGN/65/RES/11 and AGN/65/RES/14 calling for the promotion of cooperation between the two organizations,

*Have agreed* as follows:

### *Article 1*

#### AREAS OF COOPERATION

The United Nations and Interpol undertake to cooperate in the following fields, through their appropriate bodies:

(a) Responding to the needs of the international community in the face of both national and transnational crime;

(b) Assisting the international community in achieving the goals of preventing crime within and among States and improving the response to crime, in particular, through police training and public awareness campaigns aimed at alerting the public to the considerable threat posed by certain types of crime;

(c) Assisting States, in particular in their efforts to combat organized criminal groups involved in such forms of crime as money-laundering, illicit traffic in human beings, offences against minors, drug trafficking, as well as violations of international environmental and humanitarian laws;

(d) Cooperating, where appropriate, in the implementation of the mandates of international judicial institutions, such as 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 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 between 1 January and 31 December 1994, which have been or may be established by the United Nations;

(e) Cooperating, when requested by the United Nations and as appropriate, in respect of carrying out investigations and any other police-related matters in the context of peacekeeping and similar operations;

(f) Examining the possibility of establishing through special arrangements with offices and programmes concerned common or linked computerized data-

bases relating to penal law, to avoid undesirable duplication between them with respect to the collection and analysis of such information.

## *Article 2*

### CONSULTATION AND COOPERATION

1. The United Nations and Interpol shall exchange views, when appropriate, on policy issues within their respective competence and consult regularly on matters of common interest with a view to achieving their objectives and coordinating their positions and activities. When appropriate, they will also hold consultations on the most effective way of organizing particular activities of common interest related to their respective mandates and on the optimum use of their resources in connection with such activities.

2. To this end, the United Nations and Interpol shall set up appropriate structures for such consultations as and when necessary.

## *Article 3*

### EXCHANGE OF INFORMATION AND DOCUMENTS

The United Nations and Interpol shall make every effort to achieve the best use of available information related to the issues of common interest. To that end, and subject to necessary limitations and their internal regulations concerning the safeguarding of confidential or semi-confidential material and information, they shall arrange for the exchange of information and documents of common interest.

## *Article 4*

### TECHNICAL COOPERATION

1. Should the activities of the United Nations and of Interpol in fields of common interest so dictate, either organization may request the cooperation of the other whenever the latter organization is in a position to help develop the former's activities.

2. The United Nations and Interpol shall endeavour, insofar as possible and in compliance with their constituent instruments and the decisions of their competent bodies, to respond favourably to such requests for cooperation in accordance with procedures and arrangements to be mutually agreed upon.

3. The United Nations and Interpol shall cooperate, when appropriate and to the extent possible, in evaluating projects and programmes of common interest that relate to the areas of their respective competence. Interpol agrees in this regard to assist the United Nations upon request in reviewing national, regional or global crime prevention and criminal justice projects and programmes falling within the area of its expertise.

4. The United Nations and Interpol shall deepen their dialogue and promote the undertaking of joint studies and the provision of advisory services and technical assistance, regarding the mutually reinforcing interrelationship between crime prevention, the administration of justice and respect for human rights.

## *Article 5*

### JOINT ACTION

The United Nations and Interpol may, through special arrangements, decide to act jointly in the implementation of projects that are of common interest. The special arrangements shall define the modalities for the participation of each organization in such projects and shall determine the expenses payable by each of them.

## *Article 6*

### RECIPROCAL REPRESENTATION

1. In conformity with General Assembly resolution 51/1 of 22 October 1996, Interpol may participate in the sessions and work of the General Assembly of the United Nations as an observer.

2. Subject to such decisions as may be taken by its other competent bodies concerning the attendance of its meetings by observers, the United Nations shall, subject to the rules of procedure of the bodies concerned, invite Interpol to send representatives to United Nations meetings and conferences where observers are allowed, whenever matters of interest to Interpol are discussed. The provisions of this paragraph shall, in particular, be observed with regard to United Nations meetings and seminars and conferences on the prevention of crime.

3. Subject to such decisions as may be taken by its competent bodies concerning the attendance of its meetings by observers, Interpol shall invite the United Nations to send representatives to all its meetings and conferences where observers are allowed, whenever matters of interest to the United Nations are discussed.

4. The United Nations and Interpol shall make every effort to ensure that if one of them is involved in organizing an international meeting for the consideration of the issues which fall within the competence of the other, representatives of the latter will be invited to attend that meeting.

## *Article 7*

### COOPERATION BETWEEN THE SECRETARIATS

1. The Secretary-General of the United Nations and the Secretary-General of Interpol shall consult from time to time regarding the implementation of their respective responsibilities under this Agreement and other issues of common interest.

2. The Secretary-General of the United Nations and the Secretary-General of Interpol shall make appropriate administrative arrangements to ensure effective cooperation and liaison between the Secretariats of the two organizations.

## *Article 8*

### PERSONNEL ARRANGEMENTS

Subject to their relevant internal regulations, the United Nations and Interpol shall examine the possibility of organizing the exchange of personnel on a tempo-

rary basis. They will enter into special arrangements, if necessary, for that purpose.

### *Article 9*

#### IMPLEMENTATION OF THE AGREEMENT

The United Nations and Interpol may, if necessary, enter into supplementary arrangements for the implementation of the present Agreement.

### *Article 10*

#### ENTRY INTO FORCE, AMENDMENTS AND DURATION

1. This Agreement shall enter into force following the exchange of written notifications confirming the completion by both organizations of their internal requirements in this respect.

2. This Agreement may be amended by mutual consent between the United Nations and Interpol expressed in writing.

3. Either of the organizations may terminate this Agreement by giving six months' written notice to the other party.

IN WITNESS WHEREOF, the undersigned duly authorized representatives of the United Nations and Interpol have signed the present Agreement.

DONE at New York on 8 July 1997 in two copies in English and French, each text being equally authentic. One of the original copies in English and French will be deposited with the United Nations and the other will be deposited with Interpol.

FOR THE UNITED NATIONS:

(Signed) Kofi A. ANNAN  
Secretary-General

FOR THE INTERNATIONAL

CRIMINAL POLICE

ORGANIZATION—INTERPOL:

(Signed) Toshinori KANEMOTO  
President

(h) Memorandum of Understanding between the United Nations and the Organization of American States for the International Civilian Mission in Haiti. Signed at New York on 17 July 1997<sup>10</sup>

Whereas, the establishment of the International Civilian Mission in Haiti ("the Joint Mission") was welcomed by, respectively, resolution 4/92 of 13 December 1992 of the Ministers of Foreign Affairs of the Organization of American States and resolution 47/20 B, of 20 April 1993 of the General Assembly of the United Nations, with the initial task of verifying compliance with Haiti's international human rights obligations;

Whereas, the General Secretariat of the Organization of American States and the United Nations Secretariat ("the Parties") concluded, on 13 January 1995, a Memorandum of Understanding on the terms and conditions governing the structure, support and activities of the Joint Mission;

Whereas, the Parties have agreed that for the purpose of continuing the Joint Mission, the Memorandum of Understanding of 13 January 1995 will be termi-

nated and that a new Memorandum of Understanding be entered into reflecting the understanding of the Parties on the terms and conditions governing the structure, support, records and activities of the Joint Mission;

Now therefore, the Parties to this Memorandum of Understanding have agreed on the following arrangements:

### *Article I*

#### CHARACTERISTICS

1.1 The official name of the Joint Mission is "International Civilian Mission in Haiti OAS/UN (MICIVIH)". In Haiti, the Joint Mission will also be known in Creole as "Misyon Sivil Entenasyonnal en Ayiti OEA/ONU".

1.2 The headquarters of the Joint Mission is in Port-au-Prince, Haiti.

### *Article II*

#### ORGANIZATION

2.1 The Joint Mission shall be composed of the following:

2.1.1 *The Executive Director.* The Executive Director is jointly designated as Chief of the Joint Mission by the Secretary General of the Organization of American States and the Secretary-General of the United Nations. The Executive Director shall be under contract with the General Secretariat of the Organization of American States. The Executive Director shall report to the Secretary-General of the United Nations through the Special Representative, and to the Secretary General of the Organization of American States directly.

2.1.2 *Other substantive officers.* The Deputy Executive Director and Chief of Section on Institution Building shall be contracted by the United Nations. The Chief of the Promotion and Protection of Human Rights Section shall be contracted by the General Secretariat of the Organization of American States. Other substantive officers shall be apportioned between the General Secretariat of the Organization of American States and the Secretariat of the United Nations; each Party shall contract with the substantive officers apportioned to it.

2.1.3 *Human rights observers.* Each Party shall provide human rights observers and shall contract with the observers that it provides. The Executive Director shall deploy those observers throughout Haiti.

2.1.4 *Regional coordinators.* Regional coordinators shall be provided by the Parties in equal numbers.

2.1.5 *Local support staff.* The Parties shall agree on the required list of local support staff for the Joint Mission, which will be contracted and administered by the United Nations. The salaries and related costs for these staff shall be shared between the two Parties on an equal basis.

2.2 The United Nations shall provide general administrative support to the Joint Mission, as well as administering its own staff. The General Secretariat of the Organization of American States shall provide general administrative support as it deems necessary to administer its own staff and equipment.

2.3 The regulations and rules of each Party, including those pertaining to remuneration, shall apply to its respective personnel and contractors.

### *Article III*

#### OFFICE PREMISES, GOODS AND SERVICES

3.1 The United Nations shall assume responsibility for the contracting of office space as required for the Joint Mission, in Port-au-Prince as well as the designated regions. Costs for these premises, including the related charges for utilities, shall be shared between the Parties on an equal basis.

3.2 The Executive Director shall determine the Joint Mission's procurement needs, subject to the provisions of the approved budget of the Joint Mission and the relevant rules and regulations.

3.2.1 All goods and services required to support the Joint Mission, including all office equipment and supplies, communications equipment, vehicles, fuel and maintenance, shall be provided by the United Nations. Related operating and maintenance costs will be borne by the United Nations. All such goods provided by the United Nations shall remain the property of the United Nations.

3.2.2 Goods and services required to implement substantive programmes of the Joint Mission (such as media campaigns, etc.), as determined by the Executive Director, shall be procured or contracted by the United Nations according to its relevant rules and regulations, the costs for which will be shared between the Parties on an equal basis. At the conclusion of the Joint Mission, any such goods will be distributed between the Parties on an equal basis.

3.3 Vehicles, communications and other equipment belonging to the Organization of American States which are currently in use by the Joint Mission, and any other property provided subsequently by the General Secretariat of the Organization of American States, will remain available for use at the discretion of the General Secretariat of the Organization of American States. All such goods provided by the General Secretariat of the Organization of American States shall remain the property of the General Secretariat of the Organization of American States.

3.4 Each Party shall be responsible for insuring its own property, and each Party shall carry sufficient insurance against third-party claims.

### *Article IV*

#### RECORDS

4.1 The ownership and disposition of the records of the Joint Mission shall be governed by the following provisions.

4.2 For the purpose of this Agreement, records shall be defined as any document, paper, book, letter drawing, map, plate, audio-visual material, electronic or machine-readable document, or database created or received by an office or staff member in connection with, or as a result of, the official work of MICIVIH.

4.3 For appraisal purposes, records shall be divided into three groups: administrative records; programme and subject records; and human rights case records.

4.3.1 Administrative records shall be such records which pertain to the administration of the Joint Mission by either of the Parties. The administrative records of each organization shall be owned by that Party alone and shall be dis-

posed of according to its own records retention requirements, rules and regulations.

4.3.2 Programme and subject records shall be such records which pertain to the substantive programmes and activities of the Joint Mission. These records shall be jointly owned.

4.3.3 Human rights case records shall be such records on individual or group case files compiled by the Joint Mission as a result of investigations, interviews or other studies on alleged human rights violations. Such records shall be jointly owned by the Parties.

4.4 For those records that are jointly owned, a joint appraisal programme shall be performed before the end of the mission mandate by duly authorized representatives of each organization. No jointly owned records shall be disposed of without the prior written approval of both the Chief of the Archives and Records Management Section of the United Nations and the Director of the Columbus Memorial Library of the General Secretariat of the Organization of American States, or their duly authorized representatives.

4.5 Jointly owned records which both Parties wish to retain during or upon completion of the Joint Mission shall be copied and the related costs will be shared equally by the Parties.

4.6 A joint policy on determination of access to sensitive and confidential programme, subject and human rights case records shall be developed by duly authorized representatives of each Party. The policy shall establish levels of security classification, set out conditions of access and use by the Parties and govern availability of the records. Such policy shall include provisions for systematic declassification of the records after an agreed period of time.

## *Article V*

### FINANCIAL CONSIDERATIONS

5.1 The budget proposals for the Joint Mission, with particular reference to those components which will be shared between the Parties (accommodations, local support staff, substantive programmes), will be prepared by the United Nations in agreement with the General Secretariat of the Organization of American States. The mutual agreement of each Party to the budget requirements will be secured as the basis for the cost-sharing arrangements as described above, provided, however, that these total budget requirements will not be exceeded without the prior written consent of the authorized representatives of both Parties.

5.2 The General Secretariat of the Organization of American States shall, upon agreement, in writing, to the proposed budget for the Joint Mission, provide to the United Nations as a "deposit" the sum in cash equal to three months of the General Secretariat of the Organization of American States' anticipated share of the costs described above, provided, however, that this deposit shall not exceed one fourth of the General Secretariat of the Organization of American States' actual share of MICIVIH's cost for 1996. The "deposit" shall be applied to the General Secretariat of the Organization of American States' share of these costs until it is depleted.

5.3 The United Nations and the General Secretariat of the Organization of American States will exchange regular statements showing the actual costs to be

shared as reviewed and certified respectively by the Controller of the United Nations and by the Treasurer of the General Secretariat of the Organization of American States. In addition, if, in the event that any United Nations MICIVIH account is determined by its Office of Internal Oversight Services or by any other authorized United Nations certified public accounting firm or office to require adjustments, or in the event that any General Secretariat of the Organization of American States MICIVIH account is determined by its Office of the Inspector General or by its Board of External Auditors to require adjustments, the Party that determines that its account(s) require adjustments will notify the other Party in writing of these adjustments to the extent that such adjustments affect payment or reimbursement by either Party. The General Secretariat of the Organization of American States and the United Nations will expeditiously review the relevant documentation and certify invoices for the purpose of their prompt payment.

## *Article VI*

### GENERAL PROVISIONS

6.1 This Memorandum of Understanding shall take effect on the date it is signed on behalf of both Parties.

6.2 This Memorandum of Understanding shall supersede all prior agreements pertaining to the terms and conditions governing the structure, support, records and financing of the Joint Mission.

6.3 Any dispute arising out of the interpretation of this Memorandum of Understanding that cannot be resolved amicably between the Parties shall be resolved through a mutually agreeable procedure.

6.4 This Memorandum of Understanding should not be construed as a waiver of the privileges and immunities of either organization.

6.5 Either Party may terminate this Memorandum of Understanding by giving sixty days' prior written notice to the other. Provided, however, that in the event of any such termination, the provisions of article IV of the Memorandum of Understanding shall continue in effect, unless otherwise specifically agreed in writing by duly authorized representatives of the Parties.

6.6 This Memorandum of Understanding may be amended by an exchange of letters signed by duly authorized representatives of the Secretary General of the Organization of American States and the Secretary-General of the United Nations.

SIGNED in two duplicate originals on this 17th day of July 1997.

FOR THE UNITED NATIONS:  
(Signed) Jean-Pierre HALBWACHS  
Assistant Secretary-General, Controller

FOR THE GENERAL  
SECRETARIAT OF THE  
ORGANIZATION OF  
AMERICAN STATES:  
(Signed) James R. HARDING  
Assistant Secretary for  
Management



- (i) Agreement on cooperation and relationship between the United Nations and the International Tribunal for the Law of the Sea. Signed at New York on 18 December 1997<sup>11</sup>

*The United Nations and the International Tribunal for the Law of the Sea,*

*Bearing in mind* that, in accordance with the Charter, the United Nations is the principal organization dealing with matters relating to the maintenance of international peace and security and that one of the main purposes of the Organization is to bring about by peaceful means the settlement of international disputes or situations that might lead to a breach of the peace;

*Acknowledging* the key role played by the United Nations under the Charter in the peaceful settlement of international disputes;

*Bearing in mind* that the General Assembly of the United Nations in its resolution 3067 (XXVIII) of 16 November 1973 decided to convene the Third United Nations Conference on the Law of the Sea for the adoption of a convention dealing with all matters relating to the law of the sea and that the Conference adopted the United Nations Convention on the Law of the Sea (hereinafter referred to as the Convention);

*Bearing in mind* that the International Tribunal for the Law of the Sea (hereinafter referred to as the International Tribunal) has been established in accordance with Article 287, paragraph 1 (a), and annex VI of the Convention as an autonomous international judicial body;

*Noting* the role of the International Tribunal in the peaceful settlement of disputes in relation to the uses of the seas and the oceans and their resources;

*Noting also* that the functions of the International Tribunal are consistent with Article 2, paragraph 3, of the Charter providing that international disputes shall be settled by peaceful means;

*Noting further* the responsibilities entrusted to the Secretary-General of the United Nations under Article 319 and other provisions of the Convention;

*Recalling* General Assembly resolution 51/204 of 17 December 1996 inviting the International Tribunal to participate in the sessions and the work of the General Assembly in the capacity of observer;

*Noting further* General Assembly resolution 51/34 of 9 December 1996 and the decision of the first session of the International Tribunal calling for the conclusion of a relationship agreement between the United Nations and the International Tribunal;

*Have agreed* as follows:

### *Article 1*

#### GENERAL

1. The United Nations recognizes the International Tribunal as an autonomous international judicial body with jurisdiction, as provided for in the relevant provisions of the Convention and the Statute of the International Tribunal annexed thereto.

2. The International Tribunal recognizes the responsibilities of the United Nations under the Charter, in particular in the fields of international peace and se-

curity, economic, social, cultural and humanitarian development and the peaceful settlement of international disputes.

3. The United Nations and the International Tribunal undertake to respect each other's status and mandate and to establish cooperative working relations pursuant to the provisions of this Agreement.

## *Article 2*

### COOPERATION AND COORDINATION

The United Nations and the International Tribunal, with a view to facilitating the effective attainment of their objectives and the coordination of their activities, will:

- (a) Consult and cooperate, whenever appropriate, on matters of mutual concern; and
- (b) Pursue, whenever appropriate, initiatives to coordinate their activities.

## *Article 3*

### RECIPROCAL REPRESENTATION

1. Without prejudice to the decision of the General Assembly in resolution 51/204 granting observer status to the International Tribunal, and subject to such decisions as may be taken concerning the attendance of meetings by observers, the United Nations shall, subject to the rules and practices of the bodies concerned, invite the International Tribunal to attend meetings and conferences convened under the auspices of the United Nations, where observers are allowed, and whenever matters of interest to the International Tribunal are under discussion.

2. Subject to the applicable provisions of the rules of the International Tribunal, the Secretary-General of the United Nations or representatives of the Secretary-General may attend public meetings of the International Tribunal or its Seabed Disputes Chamber, including oral hearings.

3. Subject to the rules of the International Tribunal, written statements submitted by the United Nations to the International Tribunal for distribution shall be distributed by the Registry to the members of the International Tribunal. Written statements presented by the International Tribunal to the United Nations for distribution shall be distributed by the Secretariat of the United Nations to all members of the appropriate organs of the United Nations in accordance with the relevant rules of procedure. Such written statements will be circulated in the quantities and languages in which they were made available to the Registry or the Secretariat.

## *Article 4*

### EXCHANGE OF INFORMATION AND DOCUMENTS

1. The United Nations and the International Tribunal shall, to the fullest extent possible and practicable, and subject to paragraphs 2 and 3 of this article, arrange for the regular exchange of information and documents of mutual interest. In particular:

- (a) The Secretary-General of the United Nations shall:
  - (i) Periodically transmit to the International Tribunal information on developments relating to the Convention that are relevant to the work of the International Tribunal, including copies of communications received by the Secretary-General in the capacity of depositary of the Convention or depositary of any other agreement which confers jurisdiction on the International Tribunal;
  - (ii) Transmit to the International Tribunal copies of any documents notified to the Secretary-General or otherwise communicated to the United Nations by the International Court of Justice pursuant to its Statute and Rules of Court;
  - (iii) Subject to the applicable rules and regulations and the obligations of the United Nations under the relevant agreements, furnish to the International Tribunal information requested by it as relevant to a case before it.
- (b) The Registrar of the International Tribunal shall:
  - (i) Periodically transmit to the United Nations information concerning developments under the Convention that are related to the activities of the International Tribunal;
  - (ii) Transmit to the United Nations information and documentation relating to the work of the International Tribunal, including documentation relating to pleadings, oral proceedings, orders, judgements and other communications and documentation, including those relating to applications submitted to the International Tribunal in accordance with articles 290 and 292 of the Convention;
  - (iii) Furnish to the United Nations, with the concurrence of the International Tribunal and subject to its Statute and Rules, any information relating to the work of the International Tribunal requested by the International Court of Justice.

2. Nothing in this Agreement shall be construed to require either the United Nations or the International Tribunal to furnish any information the provision of which would, in its judgement, constitute a violation of the confidentiality of such information or of rights in proprietary materials.

3. The United Nations and the International Tribunal shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information related to matters of mutual interest. They will strive to combine, where appropriate, their efforts to secure the greatest possible usefulness and utilization of such information and to minimize the burdens placed upon the national Governments and other organizations from which such information may be collected.

## *Article 5*

### REPORTS TO THE UNITED NATIONS

1. The International Tribunal shall keep the United Nations informed of its activities that may require the attention of the United Nations. For this purpose, the International Tribunal may, when it deems it appropriate:

(a) Submit reports to the United Nations through the Secretary-General of the United Nations;

(b) Notify the Secretary-General of the United Nations whenever, in its opinion, a question within the competence of the Security Council, in particular relating to the application of article 298, paragraph 1 (c), of the Convention, arises in connection with the work of the International Tribunal.

## *Article 6*

### PERSONNEL ARRANGEMENTS

1. The United Nations and the International Tribunal agree to apply as far as practicable common personnel standards, methods and arrangements designed to avoid serious discrepancies in terms and conditions of employment, to avoid competition in recruitment of personnel and to facilitate any mutually desirable interchange of personnel in order to obtain the maximum benefit from their services.

2. The United Nations and the International Tribunal agree to cooperate to the fullest extent possible in achieving these ends and in particular they agree to:

(a) Periodically consult on matters of mutual interest relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scale and allowances, retirement and pension rights and staff regulations and rules, with a view to securing as much uniformity in these matters as shall be found feasible;

(b) Cooperate in the interchange of personnel, when desirable, on a temporary or permanent basis, making due provision for the retention of seniority and pension rights;

(c) Strive for maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services;

(d) Cooperate in seeking an arrangement that will allow the extension of the competence of the United Nations Administrative Tribunal to the staff of the Registry of the International Tribunal.

## *Article 7*

### CONFERENCE SERVICES

1. Upon the request of the International Tribunal, the United Nations may, subject to availability, provide to the International Tribunal, on a reimbursable basis, such facilities and services as may be required for the sessions of the International Tribunal, including translation and interpretation services, documentation and conference services.

2. The terms and conditions on which any facilities or services of the United Nations in connection with the matters referred to in this article may be extended to the International Tribunal shall, where necessary, be the subject of supplementary arrangements concluded for this purpose.

## *Article 8*

### ADMINISTRATIVE COOPERATION

The United Nations and the International Tribunal recognize the desirability of cooperation in administrative matters of mutual interest. They shall consult, from time to time, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They shall also consult to explore the possibility of continuing or establishing common facilities or services in specific areas.

## *Article 9*

### LAISSEZ-PASSER

Members of the International Tribunal, the Registrar and other officials of the Registry shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General of the United Nations and the International Tribunal, to use the laissez-passer of the United Nations as a valid travel document where such use is recognized by States Parties to the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea or other agreements defining the privileges and immunities of the International Tribunal, its members and officials. The above is without prejudice to the right of the International Tribunal to issue its own travel documents.

## *Article 10*

### BUDGETARY AND FINANCIAL MATTERS

1. The International Tribunal recognizes the desirability of establishing close budgetary and financial relationships with the United Nations so that the maximum measure of coordination and uniformity with respect to administrative operations may be secured.

2. The United Nations and the International Tribunal agree to cooperate to the fullest extent possible in achieving these ends.

3. The International Tribunal agrees to conform, as far as may be practicable and appropriate, to standard practices and forms recommended by the United Nations.

4. The Registrar of the International Tribunal may consult with the Secretary-General of the United Nations with a view to achieving consistency in the presentation of the budget of the International Tribunal with that of the United Nations.

5. The United Nations may, upon request of the International Tribunal, provide advice on financial and fiscal questions of interest to the International Tribunal with a view to achieving coordination and the securing of uniformity in such matters.

## *Article 11*

### FINANCING OF SERVICES

The costs and expenses resulting from the cooperation or the provision of services pursuant to this Agreement shall be subject to separate arrangements be-

tween the United Nations and the International Tribunal. To that end, the United Nations and the International Tribunal shall consult each other with a view to determining the most equitable manner in which such costs and expenses shall be borne.

### *Article 12*

#### IMPLEMENTATION OF THE AGREEMENT

The Secretary-General of the United Nations and the Registrar of the International Tribunal may enter into such supplementary arrangements for the implementation of this Agreement as may be found desirable in the light of the operating experience of the United Nations and the International Tribunal.

### *Article 13*

#### AMENDMENTS

This Agreement may be amended by agreement between the United Nations and the International Tribunal. Any such amendment agreed upon shall enter into force on its approval by the General Assembly of the United Nations and by the International Tribunal.

### *Article 14*

#### ENTRY INTO FORCE

1. This Agreement shall come into force on its approval by the General Assembly of the United Nations and by the International Tribunal.

2. Pending such approval this Agreement shall be applied provisionally from the date of its signature by the Secretary-General of the United Nations and the President of the International Tribunal.

IN WITNESS THEREOF the undersigned have signed the present agreement.

SIGNED this 18th day of December 1997 at United Nations Headquarters in New York in two originals in the English language.

FOR THE UNITED NATIONS:

(Signed) Kofi A. ANNAN  
Secretary-General

FOR THE INTERNATIONAL  
TRIBUNAL FOR THE LAW  
OF THE SEA:

(Signed) Thomas A. MENSAH  
President

- (j) Memorandum of Understanding with exchange of letters between the United Nations and the Government of Italy regarding the use by the United Nations of premises on military installations in Italy for the support of peacekeeping, humanitarian and related operations. Signed at Rome on 23 November 1994<sup>12</sup>

### *Article I*

#### DEFINITIONS

For the purposes of this Memorandum of Understanding the following definitions shall apply:

(a) The expression "Government" means the Government of the Republic of Italy;

(b) The expression "United Nations" means the international organization established under the Charter of the United Nations;

(c) The expression "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 Republic of Italy became a party on 3 February 1958;

(d) The expression "Secretary-General" means the Secretary-General of the United Nations;

(e) The expression "appropriate Italian authorities" means such national or local authorities, including military ones, in the Republic of Italy as may be appropriate in the context and in accordance with the laws and customs applicable in the Republic of Italy;

(f) The expression "Military Installation" means any land, buildings, related utilities, facilities, appurtenances or parts thereof, located in the Republic of Italy within defined and clearly identifiable boundaries, coming under the jurisdiction of appropriate Italian authorities;

(g) The expression "Exclusive Use Premises" means any land, buildings, related utilities, facilities, appurtenances or parts thereof, of Military Installations which the appropriate Italian authorities make available to the United Nations for its exclusive use;

(h) The expression "Non-Exclusive Use Premises" means any land, buildings, related utilities, facilities, appurtenances or parts thereof, of Military Installations which the appropriate Italian authorities make available to the United Nations for its non-exclusive use incident to the United Nations use of Exclusive Use Premises;

(i) The term "Premises" means Exclusive Use Premises and Non-Exclusive Use Premises;

(j) The expression "contributing State" means a State Member of the United Nations contributing property, funds and assets to the United Nations for its use in peacekeeping, humanitarian and related operations;

(k) The expression "members assigned to Premises" means, regardless of their nationality, the official of the United Nations assigned to head the activities of the United Nations on Exclusive Use Premises and Non-Exclusive Use Prem-

ises and other officials of the United Nations assigned to such Premises, including locally recruited staff who are not assigned to hourly rates;

(l) The expression "experts on mission" means persons, other than United Nations officials coming within the scope of article VI of the Convention, performing missions for the United Nations;

(m) The expression "Parties" means the Government and the United Nations.

## *Article II*

### PURPOSE OF THIS MEMORANDUM OF UNDERSTANDING

1. The purpose of this Memorandum of Understanding is to set forth the basic terms and conditions under which the Government shall place Exclusive Use Premises and Non-Exclusive Use Premises at the disposal of the United Nations for its use in providing support to peacekeeping, humanitarian and related operations, and under which the United Nations shall use such Premises.

2. Any additional terms and conditions applicable to Exclusive Use Premises, as well as any additional terms and conditions applicable to the use by the United Nations of Non-Exclusive Use Premises, shall be set forth in Implementation Agreements (hereinafter "the Implementation Agreement") to be entered into by the Parties in accordance with article IV hereof.

## *Article III*

### APPLICATION OF THE CONVENTION

The United Nations, its property, funds and assets, wherever located and by whomsoever held, including equipment and materials leased, chartered or otherwise made available to the United Nations for its peacekeeping, humanitarian and related operations, as well as members assigned to Premises and experts on mission, shall enjoy the privileges, immunities, exemptions and facilities provided for in the Convention.

## *Article IV*

### IMPLEMENTATION AGREEMENT

When the appropriate Italian authorities make available Premises to the United Nations, without charge unless otherwise agreed in writing, the Parties shall conclude the Implementation Agreement. The Implementation Agreement shall provide that the provisions of this Memorandum of Understanding are applicable thereto and shall set forth therein a description of the Premises, including, if applicable, a site plan.



## *Article V*

### EXCLUSIVE USE PREMISES

1. Exclusive Use Premises shall be for the exclusive use of the United Nations and shall be clearly defined and physically delimited as such on the ground.
2. Exclusive Use Premises shall not be used in any manner incompatible with the purpose of this Memorandum of Understanding.
3. The United Nations shall be responsible for the normal maintenance and upkeep of Exclusive Use Premises. The appropriate Italian authorities shall be responsible for major repairs of a non-recurring nature related to damage resulting from force majeure or structural defects. The United Nations shall be responsible for the repair of damage directly attributable to its negligent use of Exclusive Use Premises. Whether the damage is due to the United Nations negligent use of Exclusive Use Premises shall be the subject of consultations between the Parties.
4. Upon the request of one of the Parties, the United Nations and the appropriate Italian authorities shall review the adequacy of Exclusive Use Premises. The Parties agree that any major modification, major remodelling or construction on Exclusive Use Premises shall be previously authorized in writing by the appropriate Italian authorities and shall be carried out in accordance with the procedures and terms to be set forth in the Implementation Agreement. The Parties further agree that minor modification and minor remodelling on Exclusive Use Premises shall also be carried out in accordance with the procedures and terms to be set forth in said Implementation Agreement.
5. The United Nations shall pay the expenses for any modification, remodelling or construction on Exclusive Use Premises.
6. Any modification, all remodelling and construction on Exclusive Use Premises shall be carried out in accordance with the pertinent Italian laws and regulations applicable to Military Installations.

## *Article VI*

### RESPONSIBILITY AND INSURANCE

1. It is the understanding of the Parties that the Republic of Italy shall not, by reason of United Nations activities under the present Memorandum of Understanding on its territory, incur any international legal responsibility for acts or omissions of the United Nations or members assigned to Premises acting or failing to act within the limits of their official functions.
2. The United Nations shall secure adequate insurance to cover responsibility towards third parties in relation to its official activities with regard to Exclusive Use Premises made available to the United Nations by the Government, without prejudice to the applicable provisions of the Convention.
3. In the event United Nations official activities in the Republic of Italy, other than with regard to Exclusive Use Premises, give rise to allegations of responsibility to third parties, the United Nations shall, if necessary, make provision for an appropriate mode of settlement with said third parties in accordance with the provisions of article VIII, section 29, of the Convention. Nothing in the present Memorandum of Understanding shall be understood as preventing the

United Nations from meeting this responsibility by way of commercial insurance or self-insurance.

4. The commercial insurance or self-insurance referred to in the above provision shall be in addition to the policies of insurance normally maintained by the United Nations with regard to its vehicles. The United Nations also requires that insurance be maintained on aircraft that it charts.

5. United Nations vehicles shall carry third-party insurance. The foregoing provision of this paragraph shall not apply to United Nations vehicles which are stored on Exclusive Use Premises. In the event, however, that stored vehicles are operated in the Republic of Italy outside of Exclusive Use Premises, they shall also carry third-party insurance.

### *Article VII*

#### ACCIDENT OR INCIDENT INVESTIGATIONS

1. All accidents or other incidents that occur on Exclusive Use Premises shall be investigated by the United Nations.

2. Accidents or other incidents that occur on a Military Installation, except those occurring on Exclusive Use Premises, involving personal injury/death or property damage/loss in which members assigned to Premises or property of the United Nations are involved, shall be jointly investigated by the Parties in accordance with terms and conditions to be set forth in a specific Implementation Agreement. Any such investigation shall be without prejudice to the Convention, the present Memorandum of Understanding and the competence of the Italian Judicial Authority.

### *Article VIII*

#### GOODS, SERVICES AND FACILITIES ON MILITARY INSTALLATIONS

1. The Parties acknowledge and agree that the United Nations shall not be required to make payment towards, reimburse or otherwise share in the Government's normal costs in providing any services, facilities, equipment, personnel or other requirements in efficiently maintaining and operating a Military Installation on which Premises are located. However, the United Nations shall, in accordance with terms and conditions to be set forth in the Implementation Agreement, reimburse the Government for costs it may incur in excess of the Government's normal costs, as described in the preceding provision, which are directly attributable to the United Nations use of Premises.

2. Without prejudice to the provisions of paragraph 1 above, the Government agrees that the United Nations shall be permitted, but not obligated, to purchase from the Government such goods, services and facilities as may be available on a Military Installation in accordance with terms and conditions to be set out in the Implementation Agreement. In that eventuality, the Government further agrees that the costs chargeable to the United Nations for any such purchase shall be based on the actual costs incurred by the Government for the goods, services and facilities supplied.

3. Furthermore, the Government agrees that members assigned to Premises shall be permitted to purchase from the Government such goods, services and

facilities as are normally available on a Military Installation to Italian military personnel. The costs chargeable to members assigned to Premises shall be based on the actual costs incurred by the Government for the goods, services and facilities supplied.

### *Article IX*

#### EXEMPTION FROM TAXATION, DUTIES, PROHIBITIONS AND RESTRICTIONS

1. The United Nations, its property, funds and assets, wherever located and by whomsoever held, shall, within the limits of its official activities, be exempt from all direct taxation levied by the State and the regions, provinces and municipalities of the Republic of Italy.

2. In order to achieve its purposes under the present Memorandum of Understanding, the United Nations shall enjoy, in respect of indirect taxation for purchases, services and transactions within the scope of its official functions, the same exemptions and facilities as enjoyed by the Government itself.

3. With respect to value-added tax (IVA), the United Nations shall be exempt from paying such tax on important purchases of goods and services and on goods imported for official use. For the purposes of the present Memorandum of Understanding, the expression "important purchases" shall mean purchases of goods or services of a value exceeding 100,000 Italian lire or such higher values as may be fixed as a general rule by the appropriate Italian authorities. These requirements, however, shall not affect the general principles laid down in this paragraph.

4. With regard to its use of Premises located on a Military Installation, the United Nations shall be exempt from consumer tax and related surcharges on electricity, methane gas and any type of fuel consumed for official use. In addition, no such taxes or related surcharges shall be levied on charges for public general services provided to the United Nations pursuant to article XII below.

5. The exemptions and facilities stipulated in this article shall not apply to charges for public general services rendered to the United Nations, it being understood that such charges shall be at the rates duly established by the appropriate Italian authorities and that these charges shall be specifically identified and itemized.

6. The United Nations, in accordance with section 7 (b), article II, of the Convention, shall be exempt from customs duties and from all other taxes, prohibitions and restrictions on goods, articles and materials of any kind imported or exported by the United Nations for its official use and activities.

7. Goods imported exempt from duties and taxes under the terms of this Memorandum of Understanding shall not be sold or given away to a third party unless the prior agreement of the appropriate Italian authorities has been obtained and the applicable duties and taxes paid by the third party. Where such duties and taxes are calculated on the basis of the value of the goods, the value at the time of disposal and the rates in force at that time shall apply.

8. The United Nations shall be exempt from customs duties (*dazi*), vehicle ownership tax and any other duties, as well as from all prohibitions and restrictions in respect of the import of motor vehicles, including spare parts therefor, re-

quired for official use. The United Nations may dispose freely of such vehicles three years after their importation, without any prohibition, restriction, customs duties or other levies. Notwithstanding the preceding provision, such vehicles may be disposed of at an earlier date, subject to the mutual agreement of the Parties. Such vehicles shall be registered and licensed in accordance with applicable Italian laws and regulations. The Government shall provide such special licence plates for United Nations vehicles as may be appropriate under Italian laws and regulations.

9. Fuel and lubricants for vehicles may, for United Nations official use and activities, be imported, exported or locally purchased free of customs duties, and all taxes, prohibitions and restrictions.

### *Article X*

#### UNITED NATIONS FLAG AND MARKINGS

1. The Government shall recognize the right of the United Nations to display the United Nations flag and/or emblem on Exclusive Use Premises, buildings located thereon, and on its vehicles, vessels and aircraft.

2. Vehicles, vessels and aircraft of the United Nations shall carry a distinctive United Nations identification which shall be notified to the appropriate Italian authorities.

### *Article XI*

#### INVIOABILITY OF EXCLUSIVE USE PREMISES

Without prejudice to the fact that the Military Installation on which Exclusive Use Premises are located remains under the authority of the appropriate Italian authorities and Government territory, Exclusive Use Premises shall be inviolable and subject to the exclusive control and authority of the United Nations. No officer of the Republic of Italy, or other person exercising any public authority within the Republic of Italy, shall enter Exclusive Use Premises to perform any duties therein except with the consent of, and under conditions approved by, the United Nations. The United Nations consent to such entry shall be presumed in the event of fire or other analogous emergency requiring urgent action. Any person who has entered Exclusive Use Premises with the presumed consent of the United Nations shall, if so requested by the United Nations, leave Exclusive Use Premises immediately. Without prejudice to the provisions of the Convention or this Memorandum of Understanding, the United Nations shall prevent Exclusive Use Premises from being used as a refuge by persons who are required by the Italian Judicial Authority for arrest.

### *Article XII*

#### PUBLIC GENERAL SERVICES AND FACILITIES

1. The appropriate Italian authorities shall undertake to assist the United Nations as far as possible in obtaining and making available, without limitation by reason of this enumeration, electricity, water, sewerage, gas, post, drainage, collection of refuse, fire protection and other facilities at the most favourable rate,

and in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of the United Nations as to essential Government services. Payment for such public general services and facilities shall be made by the United Nations on terms to be agreed with appropriate Italian authorities.

2. The United Nations shall be responsible for making suitable arrangements for the provision of public general services and facilities to Exclusive Use Premises on a Military Installation and shall, upon request, make arrangements for duly authorized persons representing the appropriate public general service bodies to install, inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within Exclusive Use Premises under conditions which shall not unreasonably disturb the carrying out of the functions of the United Nations.

### *Article XIII*

#### COMMUNICATIONS FACILITIES

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

2. Subject to the provisions of paragraph 1 above:

(a) The United Nations shall have authority to install and operate within Exclusive Use Premises radio sending and receiving stations inclusive of satellite systems to connect the United Nations offices within the territory of the Republic of Italy, and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. The telecommunications services shall be operated in accordance with the International Telecommunication Convention and Regulations and the frequencies on which any such station may be operated shall be decided upon in cooperation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board.

(b) The United Nations shall enjoy, within the territory of the Republic of Italy, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between Premises, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in cooperation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be charged at the most favourable rate.

## *Article XIV*

### FINANCIAL FACILITIES

1. Without being restricted by financial controls, regulations or moratoriums of any kind, for official purposes the United Nations:

(a) May hold funds or currency of any kind and operate accounts in any currency;

(b) Shall be free to transfer its funds or currency from the Republic of Italy to another country or within the Republic of Italy and to convert any currency held by it into any other currency.

2. In exercising its rights under the above provision, the United Nations shall pay due regard to any representations made by the Government insofar as it is considered that effect can be given to such representations without detriment to the United Nations interests.

## *Article XV*

### SECURITY

1. The external perimeter security and policing of, as well as access to, Military Installations on which Exclusive Use Premises are located shall be the responsibility of the appropriate Italian authorities. Except for Exclusive Use Premises, the internal security of such Military Installations shall be the responsibility of the appropriate Italian authorities. The internal security of Exclusive Use Premises shall be the responsibility of the United Nations. Specific provisions concerning the security responsibilities of the Parties shall be set forth in the Implementation Agreement.

2. The appropriate Italian authorities shall exercise due diligence to ensure that the security and tranquillity of Exclusive Use Premises are not impaired by any person or group attempting unauthorized entry into, or creating a disturbance in the immediate vicinity of, Exclusive Use Premises. The appropriate Italian authorities shall provide outside Military Installations on which Exclusive Use Premises are located, and in the vicinity of Exclusive Use Premises, such police protection as is required for these purposes.

3. If so requested by the official of the United Nations assigned to head the activities of the United Nations on Exclusive Use Premises, the appropriate Italian authorities shall provide necessary assistance for the preservation of law and order on Exclusive Use Premises and for the removal therefrom of persons as requested by the official of the United Nations referred to in this paragraph.

4. The United Nations shall consult with the appropriate Italian authorities as to methods to ensure the security of Exclusive Use Premises, including, if necessary, the establishment or improvement of a perimeter security system.

5. Nothing in this Memorandum of Understanding shall preclude the United Nations, at its own expense and with no cost to the Government, from establishing a United Nations internal security system under its control to ensure the security of Exclusive Use Premises.

## *Article XVI*

### TRAVEL AND TRANSPORT

1. The United Nations shall enjoy, together with vehicles, vessels, aircraft and equipment either owned, leased, chartered or otherwise made available to the United Nations, freedom of movement throughout the Republic of Italy. That freedom shall, with respect to dangerous cargo, oversized vehicles and large movements of stores or vehicles through airports or on railways or roads used for general traffic within the Republic of Italy, be coordinated with the Government. The Government undertakes to supply the United Nations, where necessary, with maps and other information which may be useful in facilitating its movements.

2. The United Nations shall be entitled, for its official purposes, to use the Government railway and other public transport facilities at tariffs which shall not exceed the passenger fares or freight rates generally accorded to Italian governmental administrations.

3. The United Nations may use roads, bridges, canals and other waters, port facilities and airfields without the payment of taxes, dues, tolls or charges, including wharfage charges, landing fees, en route charges and air corridor fees. However, the United Nations will not claim exemption from charges which are in fact public utility charges for services rendered subject to their being applied at the rates duly established by the appropriate Italian authorities, provided that such charges shall be specifically identified and itemized.

4. Incident to the United Nations use of Exclusive Use Premises, aircraft of the United Nations, including civilian aircraft chartered or leased by the United Nations, and military aircraft of a contributing State providing services to the United Nations, may, upon advance notice and subject to applicable rules and standards of the International Civil Aviation Organization, take off, fly over and land on the territory of the Republic of Italy. Such aircraft may use the airport facilities of a Military Installation subject to the provisions of this Memorandum of Understanding and the terms and conditions set forth in the Implementation Agreement.

5. Vessels utilizing Italian harbours to exclusively transport personnel and materials pursuant to the United Nations use of Exclusive Use Premises may pass through the territorial waters of the Republic of Italy and utilize the regular harbour services subject to agreed conditions and with payment of the most favourable charges for required services. The Government agrees that such vessels shall be exempt from any taxes or anchorage surcharge upon receipt of a certified statement from the United Nations certifying that the sole purpose for such vessels utilizing Italian harbours is pursuant to United Nations use of Exclusive Use Premises.

6. The Government shall not collect any passenger tax from the persons travelling for official United Nations purposes on the aircraft and vessels referred to in paragraphs 4 and 5.

## *Article XVII*

### PRIVILEGES AND IMMUNITIES

1. Members assigned to Premises shall be accorded the privileges and immunities set forth under articles V and VII of the Convention. In particular they shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. This immunity from legal process shall continue to be accorded after the persons concerned are no longer officials of the United Nations;

(b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations and from having such exempt income taken into account for the purpose of assessing the amount of taxation on other income;

(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. On request from the United Nations, the spouses and immediate relatives dependent on members assigned to Premises, who are resident in the Republic of Italy, shall be accorded the opportunity to take up employment in the Republic of Italy;

(e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of the 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 and effects, including one vehicle within 12 months of first taking up their assignments in the Republic of Italy, in one or two shipments. Thereafter, they shall be entitled to import duty-free necessary replacements for such items. However, with respect to vehicles imported duty-free, such vehicles may be replaced only after a period of three years following the date of the preceding importation. Vehicles imported by members assigned to Premises shall be registered in a special series.

2. In addition to the privileges and immunities set forth under paragraph 1 above, the official of the United Nations assigned to head the activities of the United Nations on the Premises shall be accorded, in respect of himself, his spouse and minor children, the privileges, immunities, exemptions and facilities accorded by the Government to members of comparable rank of the diplomatic corps in the Republic of Italy.

## *Article XVIII*

### EXPERTS ON MISSION

Experts on mission shall be accorded the privileges, immunities and facilities set forth in articles VI and VII of the Convention.



### *Article XIX*

#### RESPECT FOR LOCAL LAWS AND REGULATIONS AND 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 prevent the occurrence of any abuse in connection with the privileges, immunities, exemptions and facilities accorded under this Memorandum of Understanding.

### *Article XX*

#### ENTRY, RESIDENCE AND DEPARTURE

1. The United Nations official assigned to head the activities of the United Nations on Exclusive Use Premises and members assigned to Premises, as well as their spouses and relatives dependent on them, shall have the right to enter into, reside in and depart from the Republic of Italy during the period of their assignment to Premises.

2. The Government undertakes to facilitate the entry into and departure from the Republic of Italy of members assigned to Premises. They shall also be exempt from any regulations governing the residence of aliens in the Republic of Italy, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in the Republic of Italy. Visas and entry/exit permits, when required, shall, for the persons referred to in paragraph 1 above, be granted without charge and as promptly as possible.

### *Article XXI*

#### IDENTIFICATION

1. The United Nations shall issue all members assigned to Premises an identification card showing full name, title, United Nations index number and photograph.

2. Members assigned to Premises shall be required to present, but not to surrender, their United Nations identity cards upon request by appropriate Italian authorities.

3. The United Nations shall inform the Government whenever a member assigned to Premises takes up or completes his assignment. It shall, at least once every year, send the Government a list of all members assigned to Premises and their family members forming part of their households.

## *Article XXII*

### PERMITS AND LICENCES

The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the United Nations for the operation of any transport or communications equipment and for the practice of any profession or occupation in connection with the United Nations use of Premises, provided that no licence to drive a vehicle or pilot an aircraft or vessel shall be issued to any person who is not already in possession of an appropriate and valid licence.

## *Article XXIII*

### SOCIAL SECURITY

1. Members assigned to Premises are subject to the United Nations Staff Regulations and Rules including article VI thereof, which sets forth provisions concerning participation in the United Nations Joint Staff Pension Fund, health protection, sick leave and maternity leave, and a workers' compensation scheme in the event of illness, accident or death attributable to the performance of official duties on behalf of the United Nations. Accordingly, the Parties agree that the United Nations and members assigned to Premises, irrespective of nationality, shall be exempt from all compulsory contributions to the social security organizations of the Republic of Italy deriving from the employment relationship between said members assigned to Premises and the United Nations.

2. The United Nations agrees that members assigned to Premises, irrespective of nationality, shall, under conditions established by the Secretary-General, be required to participate in a medical insurance scheme established by the United Nations. Family members and dependants recognized under the applicable provisions of the United Nations Staff Regulations and Rules are eligible to be covered under the aforementioned medical scheme.

## *Article XXIV*

### SETTLEMENT OF DISPUTES

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

## Article XXV

### FINAL PROVISIONS

1. The Government shall cooperate with the United Nations at all times with a view to assisting the United Nations in the fulfilment of its purposes and the discharge of its functions under the present Memorandum of Understanding. All official contacts with the Government shall be conducted by the United Nations through the Ministry of Foreign Affairs or such other Ministry as may be agreed.

2. Consultations with respect to amendments to this Memorandum of Understanding shall be entered into at the request of either the United Nations or the Government and such amendments shall be made by mutual consent. Amendments shall be in writing.

3. The present Memorandum of Understanding may be terminated by either the United Nations or the Government providing thirty-six months' prior notice in writing.

4. The present Memorandum of Understanding shall be without prejudice to the privileges and immunities of the United Nations as set forth in the Convention.

5. The present Memorandum of Understanding shall be subject to ratification by the Parliament of the Republic of Italy, and shall come into force upon receipt by the United Nations of the notification from the Government of the completion of the required formalities.

IN WITNESS WHEREOF the undersigned, duly authorized representatives of the United Nations and the Government of the Republic of Italy have, on behalf of the Parties, signed the present Memorandum of Understanding.

DONE at Rome this 23rd day of November 1994.

FOR THE UNITED NATIONS:  
(Signed) Boutros BOUTROS-GHALI  
Secretary-General

FOR THE REPUBLIC OF ITALY:  
(Signed) Cesare PREVITI  
Minister of Defence

### I

### LETTER FROM THE GOVERNMENT OF ITALY

23 November 1994

Dear Mr. Secretary-General,

On the occasion of the signing of the Memorandum of Understanding between the Republic of Italy and the United Nations regarding the Use by the United Nations of Premises on Military Installations in Italy for the Support of Peacekeeping, Humanitarian and Related Operations, I would like to refer to the discussions held between the representatives of my Government and the representatives of the United Nations concerning the interpretation and implementation of certain provisions of the Memorandum of Understanding.

I have the honour to confirm on behalf of the Government of the Republic of Italy the following understandings:

It is the understanding of the Parties that in order to give practical and full effect to the provisions of article IX, paragraph 6, and with due respect to the entitlements of the United Nations under article II, section 7 (b), of the Convention, that goods, articles and materials imported or exported by the United Nations for its official use and activities are exempt from customs duties, all other taxes, prohibitions or restrictions, it will suffice for the United Nations to provide the appropriate Italian authorities with a written declaration that the goods, articles and materials being imported or exported are required for official United Nations purposes and activities. Such written declaration shall include a list of the goods, articles and materials. Moreover, it is the further understanding of the Parties that goods, articles and materials imported or exported by the United Nations shall constitute property of the United Nations within the meaning of the Convention and, as such, may be freely refurbished, repaired, repackaged, reconfigured or otherwise utilized without prohibition or restriction on the part of appropriate Italian authorities.

It is the understanding of the Parties that, with regard to the provisions of article IX, paragraph 6, concerning the importation of goods, articles and materials by the United Nations for its official use and activities, the appropriate Italian authorities may exercise reasonable procedures and, if necessary, take appropriate practical steps with regard to health and plant-health matters, it being understood that such practical steps shall not have the effect of depriving the United Nations of its entitlements under article II, section 7 (b), of the Convention, or in any way diminishing the extent thereof. Furthermore, if either of the Parties is of the view that implementation of the foregoing provision is a matter of concern, the Parties shall consult in order to resolve the matter expeditiously.

It is the understanding of the Parties that, in implementing the provisions of article IX, paragraph 8, in respect of the importation by the United Nations of vehicles for official use that are to be utilized for the day-to-day operational needs of Premises, the United Nations shall notify the appropriate Italian authorities of its requirements. Should there be a concern on the part of either of the Parties regarding implementation of the foregoing provision, the Parties shall consult one another with a view to resolving the matter expeditiously. The Parties recognize and agree that the understanding referred to herein shall not apply to vehicles imported by the United Nations into the Republic of Italy which it intends to export therefrom for official use in a United Nations peacekeeping, humanitarian or related operation.

It is the understanding of the Parties that, with regard to the immunity from national service obligations provided for in article XVII, paragraph 1 (c), such immunity shall, with regard to locally recruited members assigned to Premises who are Italian nationals, be confined to members whose names have, by reason of their duties, been placed on a list compiled by the Secretary-General and approved by the Government; provided further that should such members assigned to Premises, other than those listed, who are Italian nationals, be called up for national service, the Government shall, upon request of the Secretary-General, grant such temporary deferments in the call-up of such members as may be necessary to avoid interruption of essential work.

It is the understanding of the Parties that the provisions of article XVII, paragraph 1 (e), (f), and (g), shall not be applicable to locally recruited members assigned to Premises who have Italian nationality or permanent resident status in the Republic of Italy.

It is the understanding of the Parties that, with regard to the provisions of article XXIII, paragraph 1, the Regulations of the United Nations Joint Staff Pension Fund provide for, inter alia, retirement, disability and survivors' benefits.

It is the understanding of the Parties that, with regard to the provisions of article XXIII, paragraph 2, the medical insurance scheme to be established by the United Nations shall provide similar protection to its subscribers as is provided to the subscribers of the medical insurance scheme established by specialized agencies of the United Nations and related organizations having headquarters in the Republic of Italy.

In addition to the aforesaid understandings of the Parties, the Government of the Republic of Italy should like to take this opportunity to advise the United Nations of its views as follows:

In the context of the provisions of article XXIII, other than salaries and emoluments received from the United Nations, all other income of members assigned to Premises who are Italian nationals or permanent residents which is included in the yearly income tax return (IRPEF) is subject to the mandatory contributions for social security and health insurance provided for under Italian law.

With further regard to the provisions of article XXIII, it is the position of the Government of the Republic of Italy that medical services provided by the Italian National Health Service to members assigned to Premises who are Italian nationals or permanent residents shall be reimbursed by the insurance company chosen by the United Nations or by the person concerned directly to the Italian health structure providing the services, within the limits of the insurance policy. Medical services exceeding such limits shall be the responsibility of the Italian National Health Service according to the health insurance level provided for by the Service to Italian nationals or permanent residents who have residence in the Republic of Italy.

(Signed) Cesare PREVITI  
Minister of Defence

## II

### LETTER FROM THE UNITED NATIONS

23 November 1994

Sir,

I have the honour to acknowledge receipt of Your Excellency's letter of 23 November 1994 in which you confirm your Government's understandings concerning the interpretation of certain provisions of the Memorandum of Understanding between the Government of the Republic of Italy and the United Nations regarding the Use by the United Nations of Premises on Military Installations in Italy for the Support of Peacekeeping, Humanitarian and Related Operations.

I wish to confirm, on behalf of the United Nations, that the understandings reflected in the above-mentioned letter fully correspond to the views of the United Nations on the subject.

(Signed) Boutros BOUTROS-GHALI  
Secretary-General

- (k) Special Agreement between the United Nations and the International Tribunal for the Law of the Sea extending the jurisdiction of the United Nations Administrative Tribunal to the International Tribunal for the Law of the Sea with respect to applications by staff members of the International Tribunal for the Law of the Sea alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund. Signed at Hamburg on 18 February 1998<sup>13</sup>

WHEREAS, in accordance with article 3 of the Regulations of the United Nations Joint Staff Pension Fund (hereinafter referred to as "the Pension Fund"), the General Assembly of the United Nations, upon the recommendation of the United Nations Joint Staff Pension Board, and after acceptance by the International Tribunal for the Law of the Sea (hereinafter referred to as "the International Tribunal") of the Regulations of the Pension Fund and agreement reached with the Board as to the conditions governing the admission of the International Tribunal to membership in the Pension Fund, by its resolution 51/217 of 18 December 1996 decided to admit the International Tribunal to membership in the Pension Fund, as from 1 January 1997;

WHEREAS, by its resolution 678 (VII) of 21 December 1952, the General Assembly of the United Nations recommended that the specialized agencies which are member organizations of the Pension Fund accept the jurisdiction of the United Nations Administrative Tribunal (hereinafter referred to as "the Administrative Tribunal") in matters involving applications alleging non-observance of the Regulations of the Pension Fund;

WHEREAS, it is desirable that other member organizations of the Pension Fund also accept the jurisdiction of the Administrative Tribunal in such matters;

WHEREAS, the States Parties to the United Nations Convention on the Law of the Sea, by a decision taken at their Fourth Meeting held from 4 to 8 March 1996, authorized the acceptance by the International Tribunal of the jurisdiction of the Administrative Tribunal in the matters referred to above, and thereafter the International Tribunal endorsed this decision;

WHEREAS, the United Nations Joint Staff Pension Board, at its session held in April 1953, recorded its understanding that for matters involving the Regulations of the Pension Fund, full faith, credit and respect shall be given to the proceedings, decisions and jurisprudence of the Administrative Tribunal, if any, of the agency concerned relating to the staff regulations of that agency, as well as to the established procedures for the interpretation of such staff regulations;

Now, therefore, it is agreed as follows:

### *Article I*

1. The Administrative Tribunal shall be competent to hear and pass judgment, in accordance with the applicable provisions of its Statute and its Rules, upon applications alleging non-observance of the Regulations of the Pension Fund presented by:

(a) Any staff member of the International Tribunal, eligible under article 21 of the Regulations to become a participant in the Fund, even after his or her employment has ceased, and any person who has succeeded to such staff member's rights on his or her death;

(b) Any other person who can show that he or she is entitled to rights under the Regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of the International Tribunal.

2. In the event of a dispute as to whether the Administrative Tribunal has competence, the matter shall be settled by the decision of that Tribunal.

### *Article II*

The judgements of the Administrative Tribunal shall be final and without appeal and the International Tribunal agrees, insofar as it is affected by any such judgement, to give full effect to its terms.

### *Article III*

1. The administrative arrangements necessary for the functioning of the Administrative Tribunal with respect to cases arising under this Agreement shall be made by the Secretary-General of the United Nations in consultation with the Registrar of the International Tribunal.

2. The additional expenses which may be incurred by the United Nations in connection with the proceedings of the Administrative Tribunal relating to cases arising under this Agreement shall be borne by the Pension Fund. These additional expenses shall include:

(a) Any travel and subsistence expenses of the members of the Administrative Tribunal and its staff when such expenses are specially required for dealing with cases under this Agreement and are in excess of those required by that Tribunal for dealing with cases relating to staff members of the United Nations;

(b) Any wages of temporary staff, cables, telephone communications and other "out of pocket" expenses when such expenses are specially required for dealing with cases under this Agreement.

### *Article IV*

This Agreement, of which the English and French texts are equally authentic, has been duly signed in duplicate in each of these languages, at the sites and on the dates appearing under the respective signatures, and shall enter into force as from 1 January 1997.

FOR THE INTERNATIONAL  
TRIBUNAL FOR THE  
LAW OF THE SEA:  
(Signed) G. E. CHITTY  
Dated 18 February 1998  
At Hamburg

FOR THE UNITED NATIONS:  
(Signed) Joseph E. CONNOR  
Dated 25 February 1998  
At New York

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

### **1. CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES.<sup>14</sup> APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 21 NOVEMBER 1947**

In 1997, the following States acceded to the Convention or, if already parties, undertook by a subsequent notification to apply the provisions of the Convention, in respect of the specialized agencies indicated below:

<i>State</i>	<i>Date of receipt of instrument of accession or notification</i>	<i>Specialized agencies</i>
Lithuania	10 February 1997	IMO (revised text of annex XII), IFC, IDA, WIPO, IFAD, UNIDO
Uzbekistan	18 February 1997	ILO, ICAO, UNESCO, IMF, IBRD, WHO (third revised text of annex VII), UPU, ITU, WMO, IFC, IDA, WIPO, UNIDO

As of 31 December 1997, 105 States were parties to the Convention.<sup>15</sup>

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### **2. INTERNATIONAL LABOUR ORGANIZATION**

- (a) Agreement between the International Labour Organization and the Government of the Federal Democratic Republic of Ethiopia concerning the office of the Organization in Addis Ababa.<sup>16</sup> Signed at Addis Ababa on 8 September 1997<sup>17</sup>

“ . . .

#### *Article 2*

##### **STATUS**

The Office shall possess juridical personality. It shall have the capacity:

1. To contract;
2. To acquire and dispose of movable property; and
3. To institute legal proceedings.

#### *Article 3*

##### **INVIOABILITY OF THE PREMISES**

1. The premises of the Office shall be inviolable.
2. The competent authorities of Ethiopia shall exercise due diligence to ensure that the tranquillity of the Office is not disturbed.



3. Without prejudice to the provisions of this Agreement, the Organization shall prevent the Office from becoming a refuge for persons who are avoiding arrest under the law of Ethiopia, or who are required by the Government for extradition to another country or who are endeavouring to avoid service of legal process.

#### *Article 4*

##### FACILITIES AND PUBLIC SERVICES

1. The Government will afford every assistance in its power to enable the Office to secure, at its own expense, the necessary facilities for its proper functioning.

2. The Government will exercise due diligence to ensure that the Office is supplied with the necessary public services on equitable terms. The Office shall bear the cost of these services.

4. In the case of interruption or threatened interruption of any such services, the Government will do its utmost to enable the Office to carry on with its essential work.

#### *Article 5*

##### PROPERTY, FUNDS, ASSETS AND COMMUNICATIONS

1. The Office, its property and its assets shall enjoy immunity from every form of legal process except insofar as in any particular case the Director-General of the International Labour Office has expressly waived its immunity. It is understood that no waiver of immunity shall extend to any measures of execution.

2. The archives of the Office shall be inviolable and its official correspondence and communications not be subject to any form of censorship.

3. The Office shall enjoy for its official communications treatment no less favourable than that accorded by the Government to any other international organization in Ethiopia.

4. The Office may freely hold funds in non-Ethiopian currency; it may freely transfer those funds from Ethiopia to other countries through approved banking procedures.

5. The Office, its assets, income and other movable property shall be exempt:

(a) From all direct taxes; it is understood, however, that no claim of exemption shall be made from taxes, which are, in fact, no more than charges for public utility services;

(b) From customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Office for its exclusive official use; it is understood, however, that articles imported under such exemption will not be sold in Ethiopia except under conditions agreed with the Government;

(c) From customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

## *Article 6*

### OFFICIALS OF THE OFFICE

The staff of the Office, other than those assigned to hourly rates, shall enjoy in the territory of Ethiopia the following privileges, immunities and exemptions:

1. Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity; such immunity shall continue notwithstanding that the persons concerned may have ceased to be officials of the Organization;

2. Exemption from any form of direct taxation in respect of the salaries or emoluments paid and other benefits accorded to them by the Organization. In the event that all Ethiopian nationals and foreign permanent residents working for the other United Nations agencies operating in Ethiopia are subjected to payment of income tax on their salaries and emoluments, then the same measure shall apply to Ethiopian nationals and foreign permanent residents working for the Organization;

3. Immunity from national service obligations, provided that, with respect to Ethiopian nationals, such exemption shall be confined to the staff to whom by reason of their duties the Government agrees to grant temporary deferment of their call-up to avoid interruption in the continuation of the essential work of the Office;

4. Immunity, together with members of their families, from immigration restrictions and alien registration;

5. The same repatriation facilities as diplomatic envoys in time of crisis together with members of their families;

6. For officials other than Ethiopian nationals and permanent foreign residents of Ethiopia:

(a) Exemption from any form of direct taxation on income derived from sources outside Ethiopia;

(b) Freedom to maintain within Ethiopia or elsewhere foreign securities and, while employed by the Organization in Ethiopia and at the time of termination of such employment, the right to take out of Ethiopia funds in non-Ethiopian currencies without any restrictions or limitations provided that the said officials can show good cause for their lawful possession of such funds;

(c) The right to be accorded the same facilities in regard to foreign currency exchange facilities as are accorded by the Government to officials of comparable rank of other United Nations agencies operating in Ethiopia;

7. The right to import, except for Ethiopian nationals and permanent foreign residents of Ethiopia, free of duty and other levies, prohibitions and restrictions on imports, their furniture and effects within twelve months after first taking up their post in Ethiopia. This exemption shall include one automobile upon first installation, the transfer, replacement and disposal of which shall be subject to the same regulations as are in force for diplomatic representatives of comparable rank;

8. In addition to the immunities and privileges for which provision is made herein, the Director of the Office and the Director of the Organization's Inter-Country Team based in Addis Ababa and designated by the Director-General shall have, in respect of themselves, their spouses and minor children,

such privileges, exemptions and facilities as are accorded in international law and practice to diplomatic representatives of comparable rank.

### *Article 7*

#### LAISSEZ-PASSER

1. The Government shall recognize and accept the United Nations laissez-passer issued to the staff of the Office and experts invited to the Office on official business, as a valid travel document.

2. The Government shall issue courtesy visas to such holders when their request is accompanied by a certificate that they are travelling on the business of the ILO Office.

### *Article 8*

#### ACCESS AND RESIDENCE

The Government shall facilitate the entry into, and stay in, Ethiopia of persons visiting the Office on official business, and their departure from the country.

### *Article 9*

#### ABUSE OF PRIVILEGES AND SETTLEMENT OF DISPUTES

1. The Office and its staff shall cooperate at all times with the appropriate Ethiopian authorities to facilitate the proper administration of justice, secure the observance of law and order, and prevent the occurrence of any abuse in connection with the privileges and immunities granted by this Agreement. It shall, for this purpose, establish such rules and regulations as it may deem necessary and expedient and pay due regard to any representation made by the Government.

2. The privileges and immunities for which provision is made in this Agreement are granted for the purpose of carrying out effectively the aims and purposes of the Organization and not for the personal benefit of the staff of the Office. The Director-General of the Organization shall have the right and the duty to waive the immunity of the Director of the Office and any member of the staff in any case where such immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization.

3. Any dispute between the Organization and the Government concerning the interpretation or application of this Agreement 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 named by the Organization, one to be named by the Government and the third to be chosen by agreement of both parties, or, in case of failure, by the President of the International Court of Justice.

- (b) Agreement between the International Labour Organization and the Government of the Russian Federation concerning the office of the Organization in Moscow.<sup>18</sup> Signed at Moscow on 5 September 1997<sup>19</sup>

### *Article 1*

#### DEFINITIONS

For the purposes of this Agreement:

- (a) “the Government” means the Government of the Russian Federation;
- (b) “the ILO” means the International Labour Organization;
- (c) “the Director-General” means the Director-General of the International Labour Office;
- (d) “the MDT” means the Eastern European and Central Asian multidisciplinary advisory team, the activities of which cover the Russian Federation and such other countries in the Eastern European and Central Asian region as the Director-General may designate;
- (e) “the ILO Office” means the ILO Office in Moscow, and includes the MDT and any other technical programme or service as well as additional offices which the ILO may, with the agreement of the Government, decide to establish in the Russian Federation;
- (f) “Director or Directors of the ILO Office” means the principal executive officer of the ILO Office and of the MDT respectively, appointed by the Director-General;
- (g) “the personnel of the ILO Office” means officials, including the Director or Directors and the experts appointed or assigned by the Director-General to the ILO Office, as defined in subparagraph (e) above; this definition does not include locally recruited staff who are paid by the hour;
- (h) “dependants” means the dependants of the personnel of the ILO Office, and includes their spouses, children, close relatives and other members of the family who are considered as such for the purposes of the Staff Regulations of the International Labour Office;
- (i) “members of the household staff” means persons, other than nationals of the Russian Federation, employed as domestic staff of the personnel of the ILO Office;
- (j) “premises of the ILO Office” means the buildings and parts of buildings, and the land ancillary thereto, used for the official purposes of the ILO Office;
- (k) “meetings of the ILO” means meetings convened in the Russian Federation by the ILO, the ILO Office or the MDT, including any international conference or other gathering and any commission, committee or subgroup of any such meetings;
- (l) “the General Convention” means the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and its annex of 10 July 1948 relating to the ILO.

## *Article 2*

### THE ILO OFFICE

1. The ILO Office shall be the seat of an ILO Area Office, covering the Russian Federation and such other countries in the region identified in article 1(d) as the Director-General may designate after appropriate consultations.

2. The ILO Office and the MDT shall be headed by a single Director or two Directors, as the Director-General may decide, and shall be staffed with such other personnel appointed or assigned by or on behalf of the Director-General.

3. In addition to the ILO Office, which shall be located in Moscow, the ILO may, with the agreement of the Government, establish additional offices elsewhere in the Russian Federation.

## *Article 3*

### STATUS OF THE ILO OFFICE AND ITS PERSONNEL

1. The Government shall grant to the ILO Office, to the personnel of the ILO Office, and to its property, funds and assets, the privileges, immunities, exemptions and facilities provided for in the General Convention, except where provisions more advantageous to the ILO have been agreed between the parties.

2. Without prejudice to the provisions of paragraph 1 above, the Government shall grant to the ILO Office and to the personnel of the ILO Office treatment no less favourable than that accorded by the Government to the United Nations and any of its specialized agencies in the Russian Federation or to their personnel if this treatment is relevant to its activities.

## *Article 4*

### PREMISES OF THE ILO OFFICE

The Government shall, if requested, assist the ILO in acquiring suitable premises necessary for the ILO Office and technical facilities required for the activities of the ILO Office. To the extent possible, the Government shall also assist the ILO in acquiring in the Russian Federation suitable accommodation which may be necessary for the members of the personnel of the ILO Office who are not nationals of, or persons residing permanently in, the Russian Federation.

## *Article 5*

### PROTECTION OF THE ILO OFFICE

The Government shall take all appropriate measures to protect the premises of the ILO Office against any intrusion or damage. The ILO Office shall be accorded the same protection as that accorded to diplomatic missions in the Russian Federation. If requested by the ILO or the ILO Office, the Government shall provide a sufficient number of police for the restoration of law and order in the premises of the ILO Office and for the removal of offenders.

## *Article 6*

### EXEMPTION FROM TAXATION AND OTHER MANDATORY CHARGES

1. The ILO Office, its assets, property and income shall be exempt from all taxes, takings and other mandatory payments which have been introduced or may be introduced in the future by the Russian Federation, it being understood that the ILO will not claim exemption from taxes which are, in fact, no more than charges for services rendered. As far as indirect taxes are concerned, the ILO Office shall, without prejudice to article 3(2) of this Agreement, be granted the same treatment as that accorded to diplomatic missions in the Russian Federation. The ILO Office shall also be immune from liability for the collection of any tax or duty.

2. Without prejudice to the provisions of article 12(1)(iii), the ILO Office shall also be exempt from mandatory charges such as employer compulsory contributions to national social insurance schemes, and from registration therein, in respect of the personnel of the ILO Office and of any other natural person or legal entity employed by the ILO.

3. The ILO shall be exempt from customs duties, taxes and other payments (with the exception of such payments which are no more than charges for services rendered) as well as from prohibitions and restrictions on imports and exports in respect of articles imported or exported by the ILO for its official use, including publications.

4. Any goods and articles acquired in or imported to the Russian Federation by the ILO Office under the exemptions provided for in paragraph 3 above may be disposed of in the Russian Federation subject to terms agreed with the Government.

## *Article 7*

### SERVICES

1. The Government shall ensure that the ILO Office is provided, on terms no less favourable than those accorded to diplomatic missions in the Russian Federation, with the necessary services, including communication, electricity, gas, water, sewerage, drainage, collection of refuse and fire protection, of a quality not inferior to that provided to any other diplomatic mission in the Russian Federation. In case of any interruption or threatened interruption of any such services, the Government shall take appropriate steps to ensure that the activities of the ILO Office are not prejudiced.

2. Where electricity, gas, water or any other services are supplied by the Government or by authorities under the control of the Government, the ILO Office shall be charged at rates no less favourable than those charged to diplomatic missions in the Russian Federation.

## *Article 8*

### FINANCIAL FACILITIES

The treatment enjoyed by the ILO in the Russian Federation shall be the same as that accorded to diplomatic missions in the matter of opening, operating and closing bank accounts in local or foreign currencies.

## *Article 9*

### FREEDOM OF MEETING AND DISCUSSION

The ILO shall have the right to convene meetings in the premises of the ILO Office and, with the agreement of the Government, at other locations in the territory of the Russian Federation. The provisions of article 5 of this Agreement shall apply *mutatis mutandis*.

## *Article 10*

### COMMUNICATIONS

1. The ILO Office shall enjoy in the Russian Federation treatment no less favourable than that accorded to diplomatic missions in the Russian Federation, in the matter of priorities, rates and charges for communication services.

2. All official correspondence and other official communications of the ILO Office shall be immune from censorship and any other form of interception or interference.

3. The ILO Office shall have the right in the Russian Federation to use codes and to dispatch and receive correspondence and other communications either by diplomatic courier or in sealed bags, which shall have immunities and privileges no less favourable than those accorded to diplomatic couriers and bags. The installation and use by the ILO Office of wireless transmitters, however, shall only be made with the prior consent of the Government.

4. The ILO may, with the prior consent of the Government, install and operate in the Russian Federation such direct telecommunication facilities and other communication and transmission facilities as may be necessary to facilitate communications with the ILO Office both from within and from outside the Russian Federation.

## *Article 11*

### TRANSIT AND RESIDENCE

1. The Government shall take all measures required to facilitate the entry into, permanent residence in and departure from the Russian Federation, and freedom of movement in the Russian Federation, of the following persons entering the Russian Federation on official business:

- (i) The personnel of the ILO Office, together with their dependants and members of the household staff;
- (ii) Other persons officially invited by the ILO or the ILO Office in connection with official activities of the ILO in the Russian Federation, including participants in seminars and meetings convened by the ILO; the ILO or the ILO Office shall communicate the names of such persons to the Government.

The persons specified in this paragraph shall have the same freedom of movement within the territory of the Russian Federation, subject to its laws and regulations concerning access to units and other locations which require a special authorization, and the same treatment in respect of travelling facilities, as are accorded to officials of comparable rank of diplomatic missions.

2. The Government shall exempt from any restrictions on the entry of aliens or the conditions of their stay the persons, other than members of the household staff, referred to in paragraph 1 above. These persons shall be exempt from immigration restrictions and alien registration and from registration formalities for the purposes of immigration control. The ILO shall, if necessary, cooperate with the Government to avoid any prejudice to the national security of the Russian Federation.

3. The Government shall take appropriate measures (including instructions to its competent officials) to grant visas to any persons, other than members of the household staff, referred to in paragraph 1 above without delay and without payment of any charges, including multiple visas for the period of their official stay in the Russian Federation.

## *Article 12*

### PRIVILEGES AND IMMUNITIES OF THE PERSONNEL OF THE ILO OFFICE

1. The personnel of the ILO Office shall enjoy in the Russian Federation the following privileges and immunities:

- (i) Immunity from legal process in respect of words spoken or written and of all acts performed by them in their official capacity;
- (ii) Exemption from taxation on, or in respect of, salaries and emoluments paid by the ILO;
- (iii) On condition that they are covered by the ILO's own social security provisions, exemption from mandatory charges, such as social security charges, except to the extent that they are, with the ILO's consent, covered by the corresponding national social insurance scheme;
- (iv) The same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions, as well as the right to hold bank accounts in national and foreign currencies, and to transfer freely their funds in national and foreign currencies within, from and to the Russian Federation;
- (v) The same repatriation facilities in time of international crisis, together with their dependants and members of the household staff, as are accorded to diplomatic officials;
- (vi) The same customs exemptions with respect to the import and export of articles for personal use, including a motor vehicle, as are granted in the Russian Federation to officials of comparable rank of diplomatic missions by the customs laws of the Russian Federation.

The privileges and immunities set out in subparagraphs (iv), (v) and (vi) above shall not apply to the personnel of the ILO Office or their dependants who are nationals of the Russian Federation or persons having permanent residence in the territory of the Russian Federation.

2. With the exception of nationals of the Russian Federation, the personnel of the ILO Office, their dependants and members of the household staff shall be exempt from national service obligations in the Russian Federation.

3. Members of the personnel of the ILO Office who are nationals of the Russian Federation shall be exempt from national service obligations in the Russian Federation, provided that their names have, by reason of their duties, been



placed upon a list compiled by the ILO and approved by the appropriate authorities of the Russian Federation. Should other personnel of the ILO Office, who are nationals of the Russian Federation, be called up for national service, the Russian Federation shall, at the request of the ILO, grant such temporary deferments in the call-up of such personnel as may be necessary to avoid interruption in the continuation of essential work of the ILO Office.

4. Dependants who are not nationals of the Russian Federation shall be permitted to take employment in the Russian Federation, and shall be promptly provided by the competent national bodies with any clearances or documents that may be required for this purpose, in accordance with the Russian legislation.

5. In addition to the immunities, exemptions and privileges specified in paragraphs 1 to 3 above, the Director or Directors of the ILO Office, including any officer acting on their behalf during their absence from duty, as the case may be, and other members of the personnel of the ILO Office, in such ranks as may be agreed between the Government and the ILO, and their dependants, shall be accorded the privileges, immunities, exemptions and facilities that are accorded in the Russian Federation to diplomatic agents of comparable rank in accordance with the practice in the Russian Federation. The persons referred to in this paragraph shall be included in the diplomatic list.

6. The ILO shall communicate to the Government the names of the personnel of the ILO Office, their dependants and members of the household staff to whom the provisions of the present article are applicable.

7. The personnel of the ILO Office and their dependants shall be provided by the Government with a special identity card which shall serve to identify the holder to the authorities of the Russian Federation and to certify that the holder enjoys the privileges and immunities specified in this Agreement.

8. The locally recruited staff paid by the hour referred to in article 1, subparagraph (g), above, shall enjoy immunity from every form of legal process in respect of words spoken or written and all acts performed by them in their official capacity.

### *Article 13*

#### ABUSES OF PRIVILEGE

1. The privileges, immunities, exemptions and facilities accorded in this Agreement are granted in the interest of the ILO and not for the personal benefit of the individuals themselves.

2. The Director-General shall have the duty to waive the immunity of any person enjoying privileges and immunities under this Agreement in any case where, in his opinion, such immunity may be waived without prejudice to the overriding interests of the ILO.

3. The ILO and the ILO Office shall cooperate at all times with the Government to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the immunities, exemptions, privileges and facilities accorded by this Agreement. Should the Government consider that an abuse has occurred, the Director-General shall consult with the appropriate authorities of the Russian Federation without delay.

## Article 14

### SETTLEMENT OF DISPUTES

1. The ILO shall make provision for appropriate modes of settlement of:
    - (i) Disputes arising out of contracts or other disputes of a private character to which the ILO is a party;
    - (ii) Disputes involving any member of the personnel of the ILO Office who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with article 13, paragraph 2.
  2. All issues concerning the interpretation or application of this Agreement shall be settled by the parties through appropriate consultations. If a dispute cannot be resolved in such a way, either party may request the other party that the matter be submitted to arbitration. Each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be chairman. If the two arbitrators cannot agree on the third, either party may request the President of the International Court of Justice to appoint the chairman.
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### 3. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

- (a) Memorandum of Understanding on cooperation between the Food and Agriculture Organization of the United Nations and the Economic Cooperation Organization. Signed at Tehran on 8 December 1997<sup>20</sup>

#### *Preamble*

The Food and Agriculture Organization of the United Nations (hereafter referred to as FAO) and the Economic Cooperation Organization (hereafter referred to as ECO),

Mindful of their common interest in supporting the efforts of their member nations to promote regional cooperation, the attainment of food security for all, within the framework of sustainable agriculture development and the struggle against hunger and malnutrition,

Hereby agree to strengthen their collaboration as follows:

#### *Article 1. Purpose of the Memorandum of Understanding*

The purpose of this Memorandum of Understanding is to ensure cooperation between FAO and ECO by consultation, coordination of effort, mutual assistance and joint action in fields of common interest and in accordance with the objectives and principles of FAO and ECO.

## *Article 2. Consultation*

FAO and ECO shall consult on all matters mentioned in article 1 that are of mutual interest to them.

## *Article 3. Reciprocal representation*

FAO and ECO shall invite each other to participate, in an observer capacity, in conferences and meetings convened by either party on matters of common interest.

## *Article 4. Exchange of information and documents*

FAO and ECO shall arrange for the exchange of information and documents concerning matters of common interest.

## *Article 5. Technical cooperation and joint action*

1. Whenever desirable, FAO and ECO may seek each other's technical cooperation with a view to promoting the development of activities in fields of common interest and may, through their competent organs or appropriate channels, conclude special agreements or arrangements for joint action with the aim of attaining objectives of mutual interest.

2. These agreements or arrangements shall define the manner and extent of participation by each Party and shall specify the financial commitment, if any, that each is to assume.

## *Article 6. Entry into force*

This Memorandum of Understanding, being concluded in a spirit of friendly and increased cooperation, shall come into force on its signature by the Director-General of FAO and the Secretary-General of ECO.

## *Article 7. General provisions*

This Memorandum of Understanding shall on its entry into force supersede the Exchange of Letters between FAO and ECO of 26 January and 7 February 1987, respectively.

FOR THE FOOD AND  
AGRICULTURE ORGANIZATION  
OF THE UNITED NATIONS:  
(Signed) Jacques DIOUF  
Director-General

FOR THE ECONOMIC  
COOPERATION ORGANIZATION:  
(Signed) Onder OZAR  
Secretary-General

Signed on: 8th December 1997

- (b) Agreements between the Food and Agriculture Organization of the United Nations and the Governments of Australia, Bangladesh, Belize, Bolivia, Brazil, the Czech Republic, the Dominican Republic, India, Indonesia, Italy, Lesotho, the Libyan Arab Jamahiriya, Mali, Morocco, Nepal, the Philippines, Poland, Romania, Seychelles, Slovakia, Spain, the Syrian Arab Republic, Thailand, Tunisia, Turkey, Uganda, the United Arab Emirates, Uruguay and Viet Nam, based on the standard Memorandum of Responsibilities in respect of FAO sessions,<sup>21</sup> were concluded in 1997.
- (c) Agreements between the Food and Agriculture Organization of the United Nations and the Governments of Chad, Malaysia, Namibia and the Philippines, based on the standard Memorandum of Responsibilities in respect of seminars, workshops, training courses or related study tours,<sup>22</sup> were concluded in 1997.

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#### 4. UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

- (a) Relationship Agreement between the United Nations Industrial Development Organization and the Black Sea Economic Cooperation. Signed at Istanbul on 29 August 1997 and at Vienna on 8 September 1997<sup>23</sup>

##### *Article I*

##### COOPERATION AND CONSULTATION

The United Nations Industrial Development Organization (hereinafter referred to as "UNIDO") and the Black Sea Economic Cooperation (hereinafter referred to as "BSEC"), with a view to promoting the attainment of the objectives laid down by the Constitution of UNIDO and the Istanbul Summit Declaration on Black Sea Economic Cooperation establishing BSEC, agree to act in close cooperation on matters of mutual interest with a view to harmonizing their efforts in the process of development towards greater effectiveness, as far as possible, having due regard to their respective objectives and functions.

##### *Article II*

##### REPRESENTATION

1. BSEC 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, in accordance with BSEC practice, in the deliberations of the BSEC meetings on matters of particular concern to it.
3. UNIDO and BSEC shall also make, upon mutual consultation, any necessary arrangements for ensuring reciprocal representation at appropriate meetings convened under their respective auspices.

### *Article III*

#### EXCHANGE OF INFORMATION AND DOCUMENTS

UNIDO and BSEC shall undertake regular 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 the following:

- Investment promotion
- Energy
- Small and medium-sized enterprises
- Human resources development
- Industrial statistics
- Environment.

2. Any minor and ordinary expenditure related 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 BSEC 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 Secretary General of BSEC may make arrangements for ensuring the satisfactory implementation of this 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 Secretary General of BSEC.

## *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, 8 September 1997

#### FOR THE BLACK SEA ECONOMIC COOPERATION:

(Signed) Ambassador Vassil BAYTCHEV  
Secretary General  
Istanbul, 29 August 1997

- (b) Relationship Agreement between the United Nations Industrial Development Organization and the Arab League Educational, Cultural and Scientific Organization. Signed at Tunis on 10 October 1997 and at Vienna on 17 October 1997<sup>24</sup>

## *Article I*

### COOPERATION AND CONSULTATION

The United Nations Industrial Development Organization (hereinafter referred to as "UNIDO") and the Arab League Educational, Cultural and Scientific Organization (hereinafter referred to as "ALECSO"), with a view to promoting the attainment of the objectives laid down by the Constitution of UNIDO and the Charter establishing ALECSO, 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. ALECSO 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 General Conference and the Executive Board of ALECSO on matters of particular concern to it.

3. UNIDO and ALECSO 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 ALECSO shall undertake an exchange of relevant information and documents, subject to such restrictions and arrangements as may be consid-

ered necessary by either Party to preserve the confidential nature of certain information and documents.

#### *Article IV*

##### FIELDS OF COOPERATION

1. The fields to which the cooperation shall relate, in the context set forth in article I, are 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 ALECSO to determine the most equitable way of meeting such expenditure.

#### *Article V*

##### ENTRY INTO FORCE

This Agreement shall enter into force upon signature by the Director-General of UNIDO and the Director-General of ALECSO.

#### *Article VI*

##### IMPLEMENTATION OF THE AGREEMENT

The Director-General of UNIDO and the Director-General of ALECSO may make the arrangements necessary for ensuring the satisfactory implementation of this Agreement.

#### *Article VII*

##### TERMINATION OF THE AGREEMENT

Either Party may terminate this Agreement, subject to six months' written notice.

#### *Article VIII*

##### LANGUAGE

This Agreement has been drawn up in English.

FOR THE UNITED NATIONS  
INDUSTRIAL DEVELOPMENT  
ORGANIZATION:

(Signed) Mauricio de MARIA Y CAMPOS  
Director-General  
Vienna, 17/10/1997

FOR THE ARAB LEAGUE  
EDUCATIONAL, CULTURAL AND  
SCIENTIFIC ORGANIZATION:

(Signed) Mohamed EL MILI  
Director-General  
Tunis, 10/10/1997

- (c) Letter of Agreement of cooperation and annex on coordination arrangements between the United Nations Industrial Development Organization and the United Nations Development Programme. Signed at New York on 26 October 1996<sup>25</sup>

26 October 1996

Dear Colleague:

*Cooperation between UNDP and UNIDO*

We are pleased to share with you, as an annex to this letter, new coordination arrangements between UNDP and UNIDO.

The annex supersedes the previous Memorandum of Understanding of 1989 and reflects the evolution of the relationship between the two organizations as well as present realities at both headquarters and country levels.

We are confident that the clarifications provided by this updated annex will serve to strengthen still further the excellent cooperation existing between our two organizations. We invite you to help implement the various features of this annex and to provide us feedback on results achieved.

Yours sincerely,

(Signed) James Gustave SPETH  
Administrator  
UNDP

(Signed) Mauricio DE MARÍA Y CAMPOS  
Director-General  
UNIDO

**ANNEX ON COORDINATION ARRANGEMENTS BETWEEN  
UNDP AND UNIDO AT THE COUNTRY LEVEL**

1. The present annex covers coordination between UNDP and UNIDO at the country level and replaces the Memorandum of Understanding concerning the Integration of the United Nations Industrial Development Organization Field Services within the United Nations Development Programme Field Office signed by UNDP and UNIDO on 5 April and 12 April 1989, respectively. This annex takes into account UNIDO's Standard Basic Cooperation Agreement with Governments receiving assistance from UNIDO and the Standard Basic Agreement between UNDP and Governments. This annex also takes into consideration the structural reforms of UNIDO, as approved by the General Conference of UNIDO at its fifth session in Yaoundé, in December 1993. Further, this text recognizes the evolution of executing and implementing modalities and the implications for UNIDO's funding base for technical cooperation and the consequent importance of an active fund-raising role for the UNIDO Country Directors.

2. The purposes of the arrangements described below are:

(a) To ensure coordination between activities of UNIDO field staff with those of UNDP, particularly with a view to expanding operational activities in industry;

(b) To provide, as required, the services of qualified UNIDO Country Directors on matters of industrial development to recipient Governments and to UNDP Resident Representatives/United Nations Resident Coordinators (RR/RCs);

(c) To provide services of UNIDO Country Directors for the support and guidance of UNIDO programming, resource mobilization and implementation activities;

(d) To assure for UNIDO an adequate channel of communication with host Governments as well as with the United Nations regional commissions and with country, regional and subregional offices of United Nations and other relevant organizations;



(e) To ensure effective harmonization between the field cooperation of UNIDO and those of the entire United Nations system within the general framework of the development objectives of the country and region, taking into account also, where applicable, the country strategy note for operational activities of the United Nations system.

3. The respective responsibilities of UNDP and UNIDO are as follows:

(a) The Director-General of UNIDO is responsible for the appointment of UNIDO Country Directors and will consult with and provide information to the RR/RC and the concerned Government on the candidate to be appointed. Where a UNIDO Country Director has additional countries of coverage, the concerned RR/RCs and Governments will be informed of the appointment accordingly. UNIDO Country Directors will have the function of UNIDO representatives and will represent UNIDO to Governments and other entities.

(b) The UNIDO Country Director shall receive instructions from and report directly to UNIDO on matters pertaining to the formulation, implementation and evaluation of UNIDO-financed projects as well as other non-UNDP-funded projects and on other matters of direct concern to UNIDO. In such matters the UNIDO Country Director shall be the principal channel of communication between UNIDO and the Government(s) as well as other organizations in the country. He will continuously inform the RR/RC(s) of contacts and activities as outlined in paragraph 5 below.

(c) In matters related to coordination at the country level, the RR/RC will involve the UNIDO Country Director in the field of industry in ways similar to the involvement of other United Nations agency representatives in their respective substantive areas.

4. Under the general coordination of the RR/RC, the UNIDO Country Director will bear the main responsibility for UNIDO programmes in the country(ies) concerned. In particular, the UNIDO Country Director will be responsible for the following functions:

(a) Direct contacts with relevant authorities of the recipient Governments on policy matters as well as on matters pertaining to the programming, financing, execution, implementation and evaluation of UNIDO-supported industrial cooperation projects; and

(b) Contact with and guidance to those technical project personnel and other personnel in the country(ies) concerned who hold UNIDO contracts;

(c) Under the general guidance of the RR/RC, coordination and follow-up on the activities of UNIDO and other United Nations agencies with respect to industrial development.

5. On matters concerning UNDP, UNIDO Country Directors will copy their correspondence to the RR/RC, and on matters not concerning UNDP they would keep the RR/RC fully informed.

6. UNIDO Country Directors will be required to possess technical and management qualifications and expertise in the field of industry.

7. The core activities of UNIDO Country Directors will comprise the following:

- Project development and programming;
- Project implementation;
- Provision of policy and technical advice to the RR/RC on industry-related activities;
- Preparation of the UNIDO country strategy support programme;
- Provision of industrial policy advice to the Government;
- Assistance to Governments in problem and needs identification and assessment, either in providing solutions or in arranging to provide solutions for them;
- Provision of advice of both a policy and a technical nature for regions and sub-regions; it being envisaged that UNIDO Country Directors in addition to their normal duties would take on special advisory roles throughout the region;
- Supporting UNIDO activities and programmes such as economic cooperation among developing countries/technical cooperation among developing coun-

tries, investment promotion, integration of women into industrial development, rural development, technology transfer and industrial information;

- Establishment and maintenance of contacts with UNIDO national committees as well as with potential donors such as non-governmental organizations, private sector and industry associations, bilateral donors, development finance institutions and United Nations institutions/funds;
- Supervision of UNIDO industrial project activities in the field; and
- Coverage, on behalf of UNIDO, of conferences, seminars and meetings in the country, as well as public relations efforts with all partners of UNIDO in the country(ies).

8. Other functions related to the specific host country or countries will be listed in a specific job description to be issued by UNIDO. The job description will be revised according to the changing needs of the specific host country or countries.

9. In addition to the responsibilities of the UNIDO Country Directors within their countries of duty station, UNIDO Country Directors will be required to cover other countries as defined in their terms of reference. As in their duty stations, the UNIDO Country Directors will contact relevant government authorities and other relevant entities to provide advice and assistance in the programming, execution and evaluation of UNIDO projects.

10. In addition to the UNIDO Country Directors, UNIDO will place Junior Professional Officers in the countries of the duty station of UNIDO Country Directors and also in other countries, whether under the coverage of UNIDO Country Directors or not. The arrangements for the implementation of the UNIDO Junior Professional Officer programme are outlined in a separate Memorandum of Understanding between UNIDO and UNDP covering Junior Professional Officers as Assistants to the UNIDO Country Director, the relevant provisions of which are as follows:

(a) In the duty stations where a UNIDO Country Director has been appointed, UNIDO Junior Professional Officers are directly attached to UNIDO Country Director offices working under the supervision of the UNIDO Country Director and acting as Assistant to the UNIDO Country Director; and

(b) In other countries, Junior Professional Officers will primarily deal with all aspects of UNIDO's programmes under the supervision of the RR/RC and in consultation with the responsible UNIDO Country Director. The Junior Professional Officer will keep the UNIDO Country Director informed of ongoing activities and will assist the UNIDO Country Director during visits to the country.

11. In the light of the new changes, the current Arrangement between UNDP and UNIDO concerning the Junior Professional Officer Programme, signed in February 1990, will be updated and used as a supplementary document to this annex.

12. UNIDO Country Directors shall be recruited from among the most qualified candidates, including UNIDO headquarters staff members and present or former chief technical advisers and senior experts. UNIDO Country Directors will be appointed by the Director-General of UNIDO and will hold contracts independent of the source of financing, under the relevant rules, regulations and administrative instructions of UNIDO.

13. UNIDO will be responsible for the personnel and financial administration of the UNIDO Country Director programme, including funds allocated by the UNDP Executive Board under the Sectoral Support Programme, the biennial budget of UNIDO and any voluntary contribution provided by donor or host countries for this purpose.

14. In the future, all established UNIDO Country Director posts will be administered in the same way, regardless of the source of funds from which the post is financed. Such procedure will be based on the staff rules and financial rules and regulations of UNIDO. The arrangements to bring this goal about will be worked out between the relevant units of UNDP and UNIDO.

15. The financial arrangements for the UNIDO Country Director programme are as follows:

(a) In conformity with present practice, UNIDO will make provisions in its biennial budget for the funding of a number of UNIDO Country Director posts and related costs, including the costs of locally recruited staff. UNIDO will also solicit specific contributions from donors for this purpose; and

(b) Within the context of current United Nations legislation on operational activities such as General Assembly resolution 50/120, host countries, generally, excluding least developed countries, will be expected to contribute, in local currency and/or kind, to the local support costs of UNIDO Country Director offices such as salaries of secretaries and drivers, rental of premises, telephone and communication costs, and transportation facilities for the travel of UNIDO Country Directors within the country. In approaching the Government concerned, the RR/RC will negotiate the overall government contribution towards local office costs for common United Nations premises and services as per current United Nations legislation. UNIDO will negotiate a specific and distinct government contribution for local UNIDO Country Director costs. Arrangements regarding contributions towards local UNIDO Country Director costs by the Government concerned shall, when possible, be reached before the appointment of a UNIDO Country Director.

16. The arrangements for the personnel administration of the UNIDO Country Director programme are as follows:

(a) UNIDO, in consultation with the RR/RC, will request host Governments that the UNIDO Country Director be provided with the privileges and immunities applicable to other United Nations agency representatives in the countries of assignment;

(b) Support staff (secretaries, drivers, etc.) financed under the UNIDO Country Director programme would normally hold UNIDO contracts, except where the practice of a given country office differs;

(c) UNIDO will encourage and facilitate the assignment of its headquarters staff as UNIDO Country Directors. UNIDO in filling vacant posts at its headquarters would consider the candidature of interested UNIDO Country Directors. The Director-General will determine the duration of the assignment of headquarters staff as UNIDO Country Directors; and

(d) The performance evaluation of the UNIDO Country Director and support staff holding UNIDO contracts is subject to UNIDO's evaluation system. Appropriate inputs in this regard could also be requested by UNIDO from the RR/RC. Any recourse process regarding the performance evaluation of UNIDO staff would be conducted by UNIDO in accordance with its established procedures.

17. Should any question of interpretation under this annex arise at the country level which cannot be settled by mutual agreement between the RR/RC and the UNIDO Country Director, either official may refer the matter to his/her respective headquarters for joint clarification and decision by UNDP and UNIDO.

18. This annex supersedes the previously applicable Memorandum of Understanding concerning the Integration of the United Nations Industrial Development Organization Field Service within the United Nations Development Programme Field Office, signed on 5 and 12 April 1989.

19. The present annex is concluded for an indefinite period on the understanding, however, that each party shall have the right to terminate it upon twelve (12) months' written notice of termination to the other party.

20. The provisions of the present annex will enter into force upon the explicit agreement of the Executive Heads of UNDP and UNIDO expressed in an exchange of letters.

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#### NOTES

<sup>1</sup>United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

<sup>2</sup>For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General of the United Nations* (United Nations publication, Sales No. E.00.V.2).

<sup>3</sup>Came into force on 17 January 1997.

<sup>4</sup>Came into force on the date of signature.

<sup>5</sup>Came into force on 17 April 1997.

<sup>6</sup>Came into force on 7 June 1997.

<sup>7</sup>Came into force on the date of signature.

<sup>8</sup>Came into force on the date of signature.

<sup>9</sup>Came into force on 26 November 1997.

<sup>10</sup>Came into force on 17 July 1997.

<sup>11</sup>Came into force on the date of signature.

<sup>12</sup>Came into force on 11 June 1997 by notification, in accordance with article XXV.

<sup>13</sup>Came into force on 1 January 1997.

<sup>14</sup>United Nations, *Treaty Series*, vol. 33, p. 261.

<sup>15</sup>For the list of those States, see *Multilateral Treaties Deposited with the Secretary-General* (United Nations publication, Sales No. E.90.V.6).

<sup>16</sup>*Official Bulletin* of the ILO, vol. LXXX, 1997, Series A, No. 3.

<sup>17</sup>Not yet in force.

<sup>18</sup>*Official Bulletin* of the ILO, vol. LXXX, 1997, Series A, No. 3.

<sup>19</sup>Came into force on 24 September 1999.

<sup>20</sup>Came into force on 8 December 1997.

<sup>21</sup>Similar to the standard text published in *Juridical Yearbook 1972*, p. 32.

<sup>22</sup>Similar to the standard text published in *Juridical Yearbook 1972*, p. 33.

<sup>23</sup>Came into force on 8 September 1997.

<sup>24</sup>Came into force on 17 October 1997.

<sup>25</sup>Came into force on 5 May 1997.

## **Part Two**

# **LEGAL ACTIVITIES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS**



## **Chapter III**

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

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

##### **1. DISARMAMENT AND RELATED MATTERS<sup>1</sup>**

###### **(a) Nuclear disarmament issues**

The most recent global instrument concerning nuclear tests is the Comprehensive Nuclear-Test-Ban Treaty,<sup>2</sup> concluded and opened for signature in 1996, which prohibits any nuclear-weapon test explosion or any other nuclear explosion in any environment. The Treaty has been signed by a large number of States, including the five nuclear-weapon States, and eight had ratified it by the end of 1997.

At the bilateral level, the negotiations known as strategic arms reduction talks (START), between the Russian Federation and the United States of America, led to the signing of two treaties: START I and START II. The former, signed in 1991, provides for a signature reduction of the Russian and the United States strategic nuclear weapons over seven years. The latter, signed in 1993, provides for the elimination of MIRVed<sup>3</sup> ICBMs<sup>4</sup> and for the reduction of strategic nuclear warheads to no more than 3,000 to 3,500 each by the year 2003. The START II Treaty was ratified by the United States on 26 January 1996, and while the Russian Federation has not yet done so, the two States reached an understanding that once START II enters into force, they would immediately begin negotiations on START III, which would establish lower levels of their strategic nuclear warheads.

The most important instrument concerning nuclear non-proliferation is the Treaty on the Non-Proliferation of Nuclear Weapons of 1968, on the basis of which a global non-proliferation regime has been established.<sup>5</sup>

The safeguards system of the International Atomic Energy Agency (IAEA) is a crucial aspect of the non-proliferation regime and steps have been taken over the years to reinforce it. IAEA made a major change in its safeguards system by adopting the draft Model Protocol Additional to Safeguards Agreements,<sup>6</sup> which is expected to increase its ability to detect undeclared nuclear activities. The five nuclear-weapon States expressed their intention to apply those measures provided for in the Model Protocol as regards their obligations under the Non-Proliferation Treaty.

The Nuclear Monitoring Group of IAEA, assisted by and in coordination with the United Nations Special Commission (UNSCOM), continued to imple-

ment an ongoing plan for monitoring and verifying Iraq's compliance with relevant Security Council resolutions. The deterioration in the relations between Iraq and UNSCOM also affected the work of the IAEA inspection teams. The IAEA General Conference, on 3 October 1997, adopted a resolution<sup>7</sup> on the implementation of the United Nations Security Council resolutions relating to Iraq, by which it stressed Iraq's obligation to hand over without further delay currently undisclosed nuclear-weapon-related equipment, material and information and to allow IAEA inspectors unconditional and unrestricted rights of access, in accordance with Security Council resolution 707 (1991).

In the field of safety, the Agency opened for signature the 1997 Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.<sup>8</sup> The Joint Convention applies to spent fuel and radioactive waste resulting from civilian nuclear reactors and applications and to spent fuel and radioactive waste from military or defence programmes if and when such materials are transferred permanently to and managed within exclusively civilian programmes, or when declared as spent fuel or radioactive waste for the purpose of the Convention.

A number of positive developments took place with respect to existing nuclear-weapon-free zones, and the 1995 Treaty on the South-east Asia Nuclear-Weapon-Free Zone (Bangkok Treaty)<sup>9</sup> entered into force on 27 March 1997. The States parties to the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)<sup>10</sup> marked its thirtieth anniversary, and during the year the countries of the region continued to take concrete steps to consolidate the regime of military denuclearization established by the Treaty. Regarding the 1985 South Pacific Nuclear-Free Zone Treaty (Treaty of Rarotonga),<sup>11</sup> the United Kingdom ratified all three protocols to the Treaty. The status of the 1995 African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty)<sup>12</sup> remained almost unchanged from 1996.

### *Consideration by the General Assembly*

At its fifty-second session, the General Assembly, on 9 December 1997, adopted a total of 14 resolutions dealing with the subject of nuclear disarmament. Several of them are discussed below.

By its resolution 52/38 O, the General Assembly, recalling the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*, issued on 8 July 1996,<sup>13</sup> underlined once again the unanimous conclusion of the Court that 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; and called once again upon all States immediately to fulfil that obligation by commencing multilateral negotiations in 1998 leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination. The Assembly also requested all States to inform the Secretary-General of the efforts and measures they had taken on the implementation of the resolution on nuclear disarmament, and requested the Secretary-General to apprise the General Assembly of that information at its fifty-third session.

By its resolution 52/41, the General Assembly, noting that Israel remained the only State in the Middle East that had not yet become a party to the Treaty on



the Non-Proliferation of Nuclear Weapons, called upon that State to become party to the Treaty.

Resolutions adopted regarding nuclear-weapon-free zones included the traditional proposals for the establishment of such zones in the regions of the Middle East and South Asia, as well as a new proposal for a zone in Central Asia. The General Assembly also adopted a resolution on a nuclear-weapon-free southern hemisphere. Additionally, the Assembly adopted resolution 52/44, on the implementation of the Declaration of the Indian Ocean as a Zone of Peace.

### (b) The chemical and biological weapons conventions

During the year, efforts continued within the Ad Hoc Group to strengthen the 1971 Biological Weapons Convention<sup>14</sup> through the elaboration of verification and confidence-building and transparency measures. In order to assist the Ad Hoc Group in its discussions in this regard, the Chairman submitted a document entitled "Rolling text of a protocol to the Convention".<sup>15</sup>

The General Assembly adopted on 9 December 1997, on the recommendation of the First Committee, resolution 52/47, in which the Assembly welcomed the information and data provided to date and reiterated its call upon all States parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction to participate in the exchange of information and data agreed to in the *Final Declaration of the Third Review Conference of the Parties to the Convention*.<sup>16</sup> The Assembly also welcomed the progress made by the Ad Hoc Group towards fulfilling the mandate established by the Special Conference of the States Parties to the Convention on 30 September 1994, and urged the Ad Hoc Group to intensify its work with a view to completing it as soon as possible before the commencement of the Fifth Review Conference and to submit its report, to be adopted by consensus, to the States parties to be considered at a special conference. The Assembly further welcomed in that context the steps taken by the Ad Hoc Group, as encouraged by the Fourth Review Conference, to review its methods of work and, in particular, the start of negotiations on a rolling text of a protocol to the Convention.

The entry into force of the 1992 Chemical Weapons Convention<sup>17</sup> was a major event in the field of disarmament in 1997. After the Convention entered into force, two sessions of the Conference of States parties were held and measures were taken to set up the Organization for the Prohibition of Chemical Weapons.

The General Assembly adopted two resolutions on the prohibition of chemical weapons: resolution 52/38 T, adopted on 9 December 1997 on the recommendation of the First Committee, entitled "Status of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction"; and resolution 51/230, adopted on 22 May 1997 without reference to a Main Committee, entitled "Cooperation between the United Nations and the Organization for the Prohibition of Chemical Weapons".

UNSCOM continued its inspection activities in connection with the proscribed chemical and biological weapons and missile programmes of Iraq, as requested under various Security Council resolutions. However, towards the end of the year, the relationship between the Commission and Iraq deteriorated, and the question of free access to all sites in Iraq remained unresolved.

### (c) Global approaches to conventional weapons issues

During 1997, increasing attention was focused on small arms and light weapons, and on practical disarmament measures that could be applied to operations in which the United Nations was involved, especially in the peace-building phase. Through the study completed in 1997 and prepared by the Panel of Governmental Experts appointed by the Secretary-General,<sup>18</sup> which also examined the problem of illicit trafficking and the work of the Disarmament Commission on conventional arms limitation, the Organization began the delicate task of finding common ground in an area that touches the national security concerns of the majority of its Member States.

Reflecting the interest in the matter of practical measures on the part of Member States and the general public, the Secretary-General submitted a report on the consolidation of peace through practical disarmament measures,<sup>19</sup> in which he stressed the importance of various elements to the maintenance and consolidation of peace and security in areas that had suffered from conflict and underlined the role of the United Nations in providing a political framework for such practical disarmament measures.

During the year, the annual report of the Register of Conventional Arms for 1996<sup>20</sup> and the report on the continuing operation of the Register and its further development<sup>21</sup> were issued.

The General Assembly, at its fifty-second session, adopted five resolutions covering the conventional weapons area, among them resolution 52/32, entitled "Objective information on military matters, including transparency of military expenditures", and resolution 52/38 J, entitled "Small arms", in which the Assembly, *inter alia*, endorsed the recommendations contained in the report on small arms,<sup>22</sup> which had been approved unanimously by the Panel of Governmental Experts on Small Arms.

### (d) Anti-personnel mines

In 1996, the parties to the Convention on Certain Conventional Weapons<sup>23</sup> amended its Protocol II,<sup>24</sup> on prohibitions or restrictions on the use of mines, booby traps and other devices, by extending its scope of application to cover both international and internal armed conflicts, by prohibiting the use of non-detectable anti-personnel mines (albeit with a nine-year deferral period from entry into force) and their transfer, and by prohibiting the use of non-self-destructing and non-self-deactivating mines outside marked areas. In addition, it provided for broader protection for peacekeeping and other missions of the United Nations and required parties to enforce compliance with its provisions within their jurisdiction. It also instituted annual conferences for review.

However, a number of Governments, international agencies, the International Campaign to Ban Landmines<sup>25</sup> and other NGOs wished to move beyond the compromise represented by amended Protocol II towards a comprehensive ban on anti-personnel mines. This initiative resulted in the conclusion of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, opened for signature in Ottawa in December 1997,<sup>26</sup> which represents the first treaty to ban outright and mandate the destruction of a conventional weapon that has been a staple component of the arsenals of most States.

### *Consideration by the General Assembly*

The General Assembly, on 9 December 1997, on the recommendation of the First Committee, adopted three resolutions pertaining in whole or in part to anti-personnel mines: resolution 52/38 A on the Ottawa Convention; resolution 52/38 H on contributions towards banning anti-personnel landmines; and resolution 52/42 on the Convention on Certain Conventional Weapons. Additionally, on 18 December 1997, the Assembly adopted, without reference to a Main Committee, resolution 52/173, entitled "Assistance in mine clearance", in which it expressed its appreciation to Governments and regional organizations for their financial contributions to the Voluntary Trust Fund for Assistance in Mine Clearance and other demining programmes, and took note of the convening of the Mine Action Forum at Ottawa in December 1997 and of the development thereof of An Agenda for Mine Action.

#### **(e) Regional and other approaches**

Throughout 1997, Member States continued to make determined efforts, within their respective regional contexts, to devise and strengthen appropriate approaches to curb the flow of small arms and light weapons, to introduce and promote confidence-building and transparency measures, to adjust security structures to respond effectively to threats to peace, to resolve conflicts, increasingly of an intra-State nature, and to take measures to consolidate peace.<sup>27</sup> The United Nations has been involved in these endeavours.

In considering the item entitled "The situation in Africa", the Security Council met on 25 September, at the level of foreign ministers,<sup>28</sup> to consider the need for concerted international effort to promote peace and security in Africa. While noting that African States had made significant strides towards democratization, economic reform and protection of human rights, the Council remained gravely concerned by the number and intensity of armed conflicts in Africa which threatened regional peace, caused massive human dislocation and suffering, perpetuated instability and diverted resources from long-term development. The Council requested the Secretary-General to develop a "comprehensive response" to those challenges and to submit a report by February 1998 containing concrete recommendations on ways to prevent and address those conflicts and how to lay the foundation for durable peace and economic growth.

Significant achievements were recorded in the promotion of peace and security in the Americas in 1997. As part of ongoing regional efforts to combat the illicit trafficking of small arms, the Organization of American States (OAS), at its twenty-seventh General Assembly held in Lima from 2 to 6 June, approved the draft of an Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials,<sup>29</sup> submitted by the Rio Group. The final text of the Convention<sup>30</sup> was submitted to OAS member States in the autumn and opened for signature in Washington, D.C., in November.

Throughout most of 1997, the East Asia region remained the second-largest arms market after the Middle East.<sup>31</sup> Despite concerns expressed over the potential for an arms race, most States in the region continued with their respective weapons acquisition programmes.

There were several developments during the year that had an impact on European security: plans to enlarge the North Atlantic Treaty Organization (NATO); negotiations on the NATO-Russian Founding Act; Vienna negotiations on the adaptation of the 1990 Treaty on Conventional Armed Forces in Europe (CFE) Treaty<sup>32</sup> to the newly created security environment in the region; and the activities within the Organization for Security and Cooperation in Europe (OSCE).<sup>33</sup>

On 9 December 1997, the General Assembly, on the recommendation of the First Committee, took action on a number of resolutions in this area: "Regional disarmament" (resolution 52/38 P); "Conventional arms control at the regional and subregional levels" (resolution 52/38 Q); "Regional confidence-building measures" (resolution 52/39 B); "Assistance to States for curbing the illicit traffic in small arms and collecting them" (resolution 52/38 C); "United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific" (resolution 52/39 A); "Strengthening of security and cooperation in the Mediterranean region" (resolution 52/43); and "Development of good-neighbourly relations among Balkan States" (resolution 52/48).

#### (f) Other disarmament issues

In 1997, there were a number of issues that had, in most instances, been before the international community for some time but for a variety of reasons had not been directly addressed to any great extent in the different disarmament forums. They were, however, the subject of resolutions in the General Assembly.

On 9 December 1997, the General Assembly, on the recommendation of the First Committee, adopted resolution 52/37, entitled "Relationship between disarmament and development"; resolution 52/33, entitled "The role of science and technology in the context of international security and disarmament"; resolution 52/30, entitled "Compliance with arms limitation and disarmament and non-proliferation agreements"; resolution 52/31, entitled "Verification in all its aspects, including the role of the United Nations in the field of verification"; and resolution 52/38 E, entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control". The Assembly similarly adopted resolutions 52/40 C, entitled "Role of the United Nations in disarmament", and 52/38 F, entitled "Convening of the fourth special session of the General Assembly devoted to disarmament".

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## 2. OTHER POLITICAL AND SECURITY QUESTIONS

### (a) Membership in the United Nations

As at the end of 1997, 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-sixth session at the United Nations Office at Vienna from 1 to 8 April 1997.<sup>34</sup>

On the agenda item regarding the question of review and possible revision of the principles relevant to the use of nuclear power sources in outer space, the Legal Subcommittee decided not to re-establish its Working Group, based largely on the conclusion of the Scientific and Technical Subcommittee at its thirty-fourth session in 1997 that the revision of the Principles at the current stage was not necessary.<sup>35</sup>

The Legal Subcommittee did re-establish its Working Group for the agenda item on matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union. At its current session, the Subcommittee had before it, inter alia, a document entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States",<sup>36</sup> and a note by the Secretariat entitled "Comprehensive analysis of the replies to the questionnaire on possible legal issues with regard to aerospace objects".<sup>37</sup> Also submitted at the current session was a working paper entitled "An analysis of the compatibility of the approach contained in the working paper entitled 'Some considerations concerning the utilization of the geostationary satellite orbit' with the existing regulatory procedures of the International Telecommunication Union relating to the use of the geostationary orbit".<sup>38</sup>

Regarding other business, the Subcommittee agreed to recommend that a new agenda item entitled "Review of the status of the five international treaties governing outer space" should be included in its agenda beginning with the session in 1998.<sup>39</sup>

The Committee on the Peaceful Uses of Outer Space, at its fortieth session, held at the United Nations Office at Vienna from 2 to 10 June 1997, took note of the report of the Legal Subcommittee on the work of its thirty-sixth session and made a number of recommendations and decisions regarding the work of the Subcommittee.<sup>40</sup>

### *Consideration of the General Assembly*

On the recommendation of the Special Political and Decolonization Committee (Fourth Committee), the General Assembly, on 10 December 1997, adopted resolution 52/56, in which it took note of the report of the Secretary-General<sup>41</sup> on the implementation of the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space,<sup>42</sup> and, having considered the report of the Committee on the Peaceful Uses of Outer Space on the work of its fortieth session,<sup>40</sup> it endorsed that report, as well as the recommendations of the Committee regarding the Legal Subcommittee, taking into account the concerns of all countries, particularly those of developing countries.

#### (c) Comprehensive review of the whole question of peacekeeping operations in all their aspects

The General Assembly, by its resolution 52/69, of 10 December 1997, adopted on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), took note of the report of the Secretary-General on the work of the Organization<sup>43</sup> and welcomed the report of the Special Com-

mittee on Peacekeeping Operations.<sup>44</sup> It further endorsed the proposals, recommendations and conclusions of the Special Committee, contained in paragraphs 34 to 91 of its report, and urged Member States, the Secretariat and relevant organs of the United Nations to take all necessary steps to implement the proposals, recommendations and conclusions of the Special Committee.

The General Assembly also decided that the Special Committee should continue its efforts for a comprehensive review of the whole question of peacekeeping operations in all their aspects and should review the implementation of its previous proposals and consider any new proposals.

#### **(d) Supplement to an Agenda for Peace**

By its resolution 51/242, adopted on 15 September 1997 without reference to a Main Committee, the General Assembly, taking note of the reports of the Secretary-General entitled "An Agenda for Peace"<sup>45</sup> and "Supplement to an Agenda for Peace",<sup>46</sup> as well as the Statement on the Supplement to an Agenda for Peace made by the President of the Security Council on 22 February 1995,<sup>47</sup> adopted the texts on coordination and the question of sanctions imposed by the United Nations, and noted the progress made in the areas of post-conflict peace-building and preventive diplomacy and peacemaking. The texts on coordination and the question of sanctions follow:

#### **Coordination**

##### **1. COORDINATION BETWEEN THE UNITED NATIONS AND MEMBER STATES**

1. The States that constitute the United Nations membership have a central role to play in the prevention and resolution of conflicts, including through their participation in and support for United Nations efforts to those ends, in accordance with the Charter of the United Nations. The General Assembly underlines the need to strengthen the role of the Assembly in improving coordination, in accordance with its role and responsibilities under the Charter. Governments are responsible for the financing and provision of personnel, equipment and other support to mandated United Nations efforts to maintain international peace and security, whether through preventive diplomacy, peacemaking, peacekeeping or peace-building. Coordination of efforts and sharing of information between the United Nations and Member States is therefore of fundamental importance.

2. Transparency, communication and consultation between the United Nations and Member States is vital in the coordination of decisions and activities under the Charter aimed at maintaining and enhancing international peace and security. Governments should ensure that their policies in relation to the various parts and agencies of the United Nations system are consistent and in accordance with those aims, while the United Nations must ensure that its activities are in conformity with the purposes and principles of the Charter, and that States are kept fully informed, and are supportive, of the United Nations efforts.

3. Suitable arrangements for regular and timely consultations between members of the Security Council, assisted by the Secretariat, and States contributing troops to peacekeeping operations, as well as prospective troop contributors, are essential in enhancing transparency and coordination between the United Nations and Member States. Such consultations provide troop-contributing States with a channel for communication and for ensuring that their views are taken into consideration before decisions are made by the Council. The General Assembly welcomes the establishment of this consultation mechanism, which should remain under review with the aim of improving it further so as to strengthen the support for and the effectiveness of peacekeeping operations. In this connection, the As-

sembly stresses the importance of respecting the principles agreed upon in the Special Committee on Peacekeeping Operations and endorsed unanimously by the Assembly.

4. Among other possible forms of coordination between the United Nations and Member States is the support and assistance given to the Secretary-General by individual States or informal groups of Member States, created on an ad hoc basis, with respect to his efforts in the area of the maintenance of international peace and security. Operating within the framework of the Charter, groups such as the "Friends of the Secretary-General" can be resorted to whenever feasible, and can be considered as a valuable tool for the Secretary-General in his efforts, supporting the mandate entrusted to him by relevant United Nations bodies. There should be contact with the concerned State or States, and care should be taken to ensure the necessary information and transparency in relation to other Member States and to avoid duplication or overlapping of efforts.

## II. COORDINATION WITHIN THE UNITED NATIONS SYSTEM

5. In order to improve the capacity of the United Nations in the maintenance of international peace and security, particularly in conflict prevention and resolution, the General Assembly stresses the need to ensure an integrated approach to considering, planning and conducting activities in the sphere of peace in all their aspects, through all phases of a potential or actual conflict to post-conflict peace-building, at the various levels within the United Nations system. In coordinating such activities, the distinct mandates, functions and impartiality of the various United Nations entities involved should be respected. On the understanding that action to secure global peace, security and stability will be futile unless the economic and social needs of people are addressed, the Assembly also stresses the need to strengthen coordination with those departments, agencies and bodies responsible for development activities, in order to improve the effectiveness and efficiency of the United Nations system for development.

### A. *Coordination within the United Nations Secretariat*

6. Within the Secretariat in New York, coordination is required between and among all the various departments involved in peacemaking, as well as in peace-building activities and peacekeeping operations which can be multifunctional, so that they function as an integrated whole under the authority of the Secretary-General. The General Assembly notes that the Secretary-General has entrusted the main responsibility in this regard to the Task Force on United Nations Operations and interdepartmental groups at the working level on each major conflict where the United Nations is playing a peacemaking or peacekeeping role. The Assembly welcomes these moves to strengthen coordination, and emphasizes the requirement for transparency. Efforts should be made, inter alia, to further harmonize the interaction between operational units within the Secretariat so as to avoid duplication in similar fields of action.

7. The General Assembly notes the work being done within the Framework for Coordination mechanism to ensure that the pertinent departments of the Secretariat coordinate their respective activities in the planning and implementing of such operations, through sharing of information, consultations and joint action. The Assembly furthermore notes that an important element of the Framework for Coordination is the provision for staff-level consultations by the relevant departments and other parts of the Organization to undertake joint analyses and to formulate joint recommendations. The Assembly welcomes the establishment of a standing interdepartmental framework oversight group to support and ensure the initiation of such consultations and encourages the implementation, further development and improvement of the Framework for Coordination mechanism.

### B. *Coordination within the United Nations system as a whole*

8. The responsibilities involved in peacemaking, as well as in peace-building activities and peacekeeping operations which can be multifunctional, transcend the competence

and expertise of any one department, programme, fund, office or agency of the United Nations. Short-term and long-term programmes need to be planned and implemented in a coordinated way in order to consolidate peace and development. Coordination is therefore required within the United Nations system as a whole and between United Nations Headquarters and the head offices of United Nations funds, programmes, offices and agencies. In this regard, the General Assembly would encourage improved coordination of efforts, for example the establishment of coordination procedures between the United Nations and other agencies involved, to facilitate and coordinate measures to contribute to the prevention of conflicts as well as the transition from peacekeeping to peace-building. The Assembly would encourage representatives of the United Nations Secretariat and other relevant United Nations agencies and programmes, as well as the Bretton Woods institutions, to meet and work together to develop arrangements that would ensure coordination and increased cooperation with respect to the provision of assistance to institution-building and social and economic development. The aim should be to develop a network for programme coordination, involving the United Nations system, bilateral donors and, whenever appropriate, non-governmental organizations, both at the headquarters and in the regional and field offices.

9. The General Assembly welcomes the efforts of the Secretary-General to make more effective the Administrative Committee on Coordination, which periodically brings together the heads of the specialized agencies, to achieve better coordination of the activities of the various United Nations bodies, including towards the consolidation of peace and security. The Assembly also supports the role of the Inter-Agency Standing Committee in ensuring a coordinated and timely response to the humanitarian needs arising in complex emergencies.

### *C. Coordination in the field*

10. The General Assembly notes that the composition and administration of United Nations operations in the field vary considerably from one country situation to another, depending upon the political security and humanitarian dimensions of a particular crisis. In certain cases, including where the Security Council has authorized a peacekeeping operation, the Secretary-General may appoint a special representative. The special representative, working under the operational control of the Secretary-General, exercises on his behalf clearly defined authority over all the mission components. To strengthen cohesion and effective control of the military component of multifunctional peacekeeping operations, which is the central and fundamental part of such operations, the Assembly would stress the necessity of establishing and respecting clear lines of military command, as well as open channels of communication and sharing of information between the field and United Nations Headquarters, and coordinated guidance from United Nations Headquarters to the field. The Assembly underlines the need to adhere to United Nations mandates and to respect United Nations operational control and the unity of command in United Nations peacekeeping operations. In peacekeeping operations that include humanitarian elements, a field-based humanitarian coordinator who works under the overall authority of the special representative of the Secretary-General may be appointed. The Assembly considers it essential that all agencies and programmes active in the field extend their full cooperation to the special representative and encourages the efforts of the Secretary-General to ensure this. The Assembly notes the important role that the United Nations resident coordinator can play in coordinating United Nations activities in post-conflict peace-building. Furthermore, the Assembly would refer to the possibility of nominating a United Nations special coordinator while numerous agencies and programmes are working in the field during the period of transition to peace, even when there is no peacekeeping operation.

### III. COOPERATION WITH REGIONAL ARRANGEMENTS OR AGENCIES

11. The General Assembly stresses that, on the subject of cooperation between the United Nations and regional arrangements or agencies, the relevant tasks and responsibilities should be carried out with full respect for the provisions of Chapter VIII of the Charter,



relevant decisions of the Security Council and of the General Assembly, as well as the respective mandates of regional arrangements or agencies and the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security, approved by the General Assembly in its resolution 49/57 of 9 December 1994.

12. The General Assembly considers that practical cooperation between the United Nations and regional arrangements and agencies, including the recognition of the variety of mandates, scope and composition of regional arrangements or agencies, has been and can be developed further through a number of means, including consultation by working-level contacts and high-level meetings, diplomatic and operational support, staff exchanges, and joint and cooperative operations. The Assembly notes the proposals that the Secretary-General has made in respect of Africa in his report on improving preparedness for conflict prevention and peacekeeping in Africa,<sup>48</sup> and encourages him to pursue consultations with the Organization of African Unity on the matter.

13. While recalling its resolution 49/57, the General Assembly also notes the principles identified by the Secretary-General upon which cooperation between the United Nations and regional arrangements or agencies should be based, in particular the primacy of the United Nations as set out in the Charter, the defined and agreed division of labour and consistency by members of regional arrangements or agencies. The Assembly considers it important to develop further such principles, in cooperation with regional arrangements or agencies. The Assembly also agrees with the Secretary-General that, given the varied nature of regional arrangements or agencies, establishment of a universal model for their relationship with the United Nations would not be appropriate.

14. The General Assembly notes the meetings organized and arranged by the Secretary-General with regional arrangements or agencies, most recently in February 1996, and would encourage the continuation and further development of this practice on a regular basis. The Assembly underlines the importance of informing it about such meetings.

#### IV. COOPERATION AND DIALOGUE BETWEEN THE UNITED NATIONS AND NON-GOVERNMENTAL ORGANIZATIONS

15. Non-governmental organizations can play an important role in support of United Nations activities. Appropriate cooperation and dialogue between the United Nations system and non-governmental organizations can contribute to ensuring that the efforts of those organizations are consistent with, and properly coordinated with, the activities and objectives of the United Nations. Such coordination should not compromise the impartiality of the United Nations or the non-governmental nature of the organizations.

#### Question of sanctions imposed by the United Nations

1. An effectively implemented regime of collective Security Council sanctions can operate as a useful international policy tool in the graduated response to threats to international peace and security. As Security Council action under Chapter VII of the Charter of the United Nations, sanctions are a matter of the utmost seriousness and concern. Sanctions should be resorted to only with the utmost caution, when other peaceful options provided by the Charter are inadequate. The Council should give as thorough consideration as possible to the short-term and long-term effects of sanctions, having due regard to the need for the Council to act speedily in certain cases.

2. Sanctions should be established in strict conformity with the Charter, with clear objectives, provision for regular review and precise conditions for their lifting. The implementation of sanctions must adhere to the terms of the applicable Security Council resolutions. In this context, the Council must act in accordance with Article 24, paragraph 2, of the Charter. At the same time, the Council's ability to act speedily, in the objective interest of maintaining international peace and security, must be recognized.

3. The Security Council has the ability to determine the time frame of sanctions. This question is of the greatest importance and should be seriously considered in connection with

the objective of changing the behaviour of the target party while not causing unnecessary suffering to the civilian population. The Council should define the time frame for sanctions regimes taking these considerations into account.

4. While there is a need to maintain the effectiveness of sanctions imposed in accordance with the Charter, unintended adverse side effects on the civilian population should be minimized by making the appropriate humanitarian exceptions in the Security Council resolutions. Sanctions regimes must also ensure that appropriate conditions are created for allowing an adequate supply of humanitarian material to reach the civilian population.

5. The purpose of sanctions is to modify the behaviour of a party that is threatening international peace and security and not to punish or otherwise exact retribution. Sanctions regimes should be commensurate with these objectives.

6. Clarity should be a goal in the formulation of Security Council resolutions imposing sanctions. The steps required from the target country for the sanctions to be lifted should be precisely defined.

7. Before sanctions are applied, a clear warning could be expressed in unequivocal language to the target country or party.

8. The Security Council could also provide for imposing sanctions that may be partially lifted, in the event the target country or party complies with previously defined requirements imposed by specific resolutions. It could also consider the possibility of introducing a range of sanctions and lifting them progressively as each target is achieved.

9. Sanctions shall be implemented in good faith and uniformly by all States. Violations must be brought to the attention of the general membership of the United Nations through the appropriate channels.

10. Just as the Security Council periodically reviews sanctions, it should also consider whether they are being fully implemented by all States.

11. It bears recalling that monitoring and compliance is first and foremost the responsibility of individual Member States. Member States should endeavour to prevent or correct activities in violation of the sanctions measures within their jurisdiction.

12. International monitoring by the Security Council or by one of its subsidiary organs of compliance with sanctions measures, in accordance with relevant Security Council resolutions, can contribute to the effectiveness of United Nations sanctions. States that may require assistance in the implementation and monitoring of sanctions may seek the assistance of the United Nations or relevant regional organizations.

13. States should be encouraged to cooperate in exchanging information about the legislative, administrative and practical implementation of sanctions.

14. Sanctions often have a serious negative impact on the development capacity and activity of target countries. Efforts should continue to be made to minimize unintended side effects of sanctions, especially with regard to the humanitarian situation and the development capacity that has a bearing on the humanitarian situation. In some instances the application of sanctions may not be compatible, however, with bilateral and multilateral development programmes.

15. Humanitarian assistance should be provided in an impartial and expeditious manner. Means should be envisaged to minimize the particular suffering of the most vulnerable groups, keeping in mind emergency situations, such as mass refugee flows.

16. With a view to addressing the humanitarian impact of sanctions, the assistance of concerned international financial and other intergovernmental and regional organizations should be sought for providing an assessment of the humanitarian needs and the vulnerabilities of target countries at the time of the imposition of sanctions and regularly thereafter while they are being implemented. The appropriate department of the Secretariat could play a coordinating role in this context.

17. Guidelines for the formulation of the humanitarian exceptions mentioned in paragraph 4 above should be developed, bearing in mind that the humanitarian require-

ments may differ according to the stage of development, geography, natural resources and other features of the target country.

18. Foodstuffs, medicines and medical supplies should be exempted from United Nations sanctions regimes. Basic or standard medical and agricultural equipment and basic or standard educational items should also be exempted; a list should be drawn up for that purpose. Other essential humanitarian goods should be considered for exemption by the relevant United Nations bodies, including the sanctions committees. In this regard it is recognized that efforts should be made to allow target countries to have access to appropriate resources and procedures for financing humanitarian imports.

19. The work of United Nations humanitarian agencies should be facilitated in accordance with applicable Security Council resolutions and sanctions committee guidelines.

20. The concept of "humanitarian limits of sanctions" deserves further attention and standard approaches should be elaborated by the relevant United Nations bodies.

21. The target country should exert all possible efforts to facilitate equitable distribution and sharing of humanitarian assistance.

22. Having assumed great importance for a large number of countries, specific sanctions regimes would necessitate the submission of special reports by the Security Council to the General Assembly for its consideration.

23. The Secretary-General in his "Supplement to an Agenda for Peace" noted that there was an urgent need for action to respond to the expectations raised by Article 50 of the Charter. He also noted that sanctions were measures taken collectively and that the costs involved in their application should be borne equitably by all Member States.

24. More frequently resorted to in the recent past, sanctions have been causing problems of an economic nature in third countries. The importance of the subject has been reflected in intensive consideration of the question in its conceptual and specific forms by the General Assembly in the last few years.

25. Taking into account the importance of the resolutions adopted by consensus, the Security Council, the General Assembly and other relevant organs should intensify their efforts to address the special economic problems of third countries affected by sanctions regimes. They should also take into consideration the proposals presented on the subject during the debate in the Informal Open-Ended Working Group of the General Assembly on an Agenda for Peace and other relevant bodies.

26. Bearing in mind that this question has been under intensive discussion in the Sixth Committee and that those discussions are to continue during the fifty-second session of the General Assembly, it is agreed that this aspect should be addressed in an appropriate manner by the Sixth Committee during that session.

27. Security Council resolutions should include more precise mandates for sanctions committees, including a standard approach to be followed by the committees.

28. The mandates of sanctions committees should be such that they can be fulfilled in practical terms.

29. While noting the improvements in the functioning of the sanctions committees following upon the notes by the President of the Security Council of 29 March 1995,<sup>49</sup> 31 May 1995<sup>50</sup> and 24 January 1996,<sup>51</sup> and that all committees are already working on the basis of those notes, it is recognized that the process needs to be encouraged and further developed.

30. The sanctions committees should give priority to handling applications for the supply of humanitarian goods meant for the civilian population. Those applications should be dealt with expeditiously.

31. The sanctions committees should give priority to the humanitarian problems that could arise from the application of sanctions. Whenever they consider that a humanitarian problem is about to arise in a target country, such a situation should immediately be brought to the attention of the Security Council. The committees may suggest changes in specific

sanctions regimes to address particular humanitarian issues with a view to taking urgent corrective steps.

32. Likewise, when a committee considers that a sanctions enforcement problem has arisen, it should bring the situation to the attention of the Security Council. The committees may suggest changes in specific sanctions regimes to address particular enforcement issues with a view to taking urgent corrective steps.

33. Further improvements in the working methods of sanctions committees that promote transparency, fairness and effectiveness and help the committees to speed up their deliberations are necessary.

34. Measures additional to those contemplated in the aforementioned notes by the President of the Security Council might include, among others, improvements in the decision-making procedures of the sanctions committees and the possibility for affected States to implement more effectively their right to make representation to the committees against their decisions.

35. Improvements in the "authorized signatory system" should be sought so that delays in clearing proposals may be avoided. The reasons for putting applications on hold or blocking them should be immediately communicated to the applicant.

36. The practice of hearing technical presentations of information by organizations assisting in the enforcement of Security Council sanctions during closed meetings of the sanctions committees should be continued, while respecting the existing procedures followed by such committees. The target or affected countries, as well as concerned organizations, should be better able to exercise the right of explaining or presenting their points of view to the sanctions committees. The presentations should be expert and comprehensive.

37. Sanctions committee secretariats should be adequately staffed, from within existing resources. This is necessary to expedite the processing of applications and the giving of clearances.

38. Sanctions committees could analyse available information so as to determine whether regimes are being effectively implemented. They could bring their conclusions and, if appropriate, recommendations in this respect to the attention of the Security Council.

39. Clarifying statements and decisions by the sanctions committees are an important contribution to the uniform application of a given sanctions regime. Such statements and decisions must be consistent with Security Council resolutions and with one another.

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

#### (a) Environmental questions

##### *Nineteenth session of the Governing Council of the United Nations Environment Programme<sup>52</sup>*

The Governing Council held its nineteenth session at UNEP headquarters, Nairobi, in two parts: from 27 January to 7 February and on 3 and 4 April 1997. During the session, a number of decisions were adopted, including one on the development of an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade (decision 19/13 A), in which the Council requested the Executive Director, together with the Director-General of FAO, to convene a diplo-

matic conference in 1997 for the purpose of adopting and signing such an international legally binding instrument.

Other decisions concerned the development of an international legally binding instrument regarding persistent organic pollutants (decision 19/13 C) and the report of the Executive Director of UNEP on the mid-term review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s and the further development of international environmental law aiming at sustainable development (decision 19/20).<sup>53</sup> As regards the latter, the Governing Council took note of the position paper on international environmental law aiming at sustainable development<sup>54</sup> and of the preliminary study on the need for and feasibility of international environmental instruments aiming at sustainable development.<sup>55</sup> It endorsed the observations and recommendations made by the Meeting of Senior Government Officials Expert in Environmental Law for the Mid-Term Review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s on specific programme areas of the Montevideo Programme II<sup>56</sup> and requested the Executive Director to use them as guidance in further implementing the Programme.

### *Consideration by the General Assembly*

At its fifty-second session, the General Assembly, on the recommendation of the Second Committee, adopted a number of resolutions concerning the environment, including resolution 52/198 of 18 December 1997, in which the Assembly, inter alia, took note of the reports of the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, on its tenth session, held in New York from 6 to 17 January,<sup>57</sup> and its resumed tenth session, held at Geneva from 18 to 22 August 1997,<sup>58</sup> and the report of the Conference of the Parties on its first session;<sup>59</sup> welcomed the selection by the Conference of the Parties at its first session<sup>60</sup> of the International Fund for Agricultural Development to house the Global Mechanism; and, in accordance with the decision of the Conference,<sup>61</sup> invited the Fund, as the lead organization, to cooperate fully with the United Nations Development Programme and the World Bank. The General Assembly, also on 18 December 1997, adopted resolution 52/201, in which, recalling the recommendations made at the third session of the Commission on Sustainable Development on the review of chapter 15 of Agenda 21 on the conservation of biological diversity,<sup>62</sup> it welcomed the results of the third meeting of the Conference of the Parties to the Convention on Biological Diversity,<sup>63</sup> held at Buenos Aires from 4 to 15 November 1996, as reflected in the report of the meeting,<sup>64</sup> submitted in accordance with Assembly resolution 51/182 of 16 December 1996, and in that context reaffirmed the need to take concrete action to fulfil the three objectives of the Convention; and also took note of the decision of the Conference of the Parties on the conservation and sustainable use of agricultural biological diversity and the programme of work contained therein,<sup>65</sup> as well as the development of a focused work programme for forest biological diversity.<sup>66</sup>

### *(b) Population and development*

On 18 December 1997, the General Assembly, on the recommendation of the Second Committee, adopted resolution 52/188, in which it took note of the re-

port of the Secretary-General concerning the process and modalities for the review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development;<sup>67</sup> decided to convene a special session for a duration of three days from 30 June to 2 July 1999, at the highest possible level of participation, in order to review and appraise the implementation of the Programme of Action of the International Conference on Population and Development; and welcomed the operational review of the implementation of the Programme of Action to be undertaken under the auspices of the United Nations Population Fund, in cooperation with all relevant organizations of the United Nations system and other relevant international organizations. It also noted that the report and outcome of the international forum in 1999 would be submitted to the Commission on Population and Development at its thirty-second session and to the Executive Board of the United Nations Development Programme/United Nations Population Fund.

The General Assembly further decided that the Commission on Population and Development, which was currently scheduled to consider at its thirty-second session a comprehensive report of the Secretary-General on the outcome of the quinquennial review and appraisal of the implementation of the Programme of Action, should serve as the preparatory body for the final preparations for the special session for the overall review and appraisal of the implementation of the Programme of Action. In that regard it noted that the comprehensive report of the Secretary-General should also contain an overall assessment of the progress achieved and constraints faced in the implementation of the Programme of Action, as well as recommendations for future action. It encouraged Governments to undertake reviews of the progress achieved and the constraints faced therein in the implementation of the Programme of Action at the level of international cooperation, with a view to contributing to the preparations for the special session.

### (c) Economic issues

At the fifty-second session, the General Assembly, on the recommendation variously of the Second Committee and of the Third Committee, adopted a number of resolutions pertaining to economic issues, among them resolution 52/179 on the global partnership for development: high-level intergovernmental consideration of financing for development; resolution 52/180 on global financial flaws and their impact on the developing countries; resolution 52/181 on unilateral economic measures as a means of political and economic coercion against developing countries; resolution 52/185 on enhancing international cooperation towards a durable solution to the external debt problem of developing countries; resolution 52/186 on renewal of the dialogue on strengthening international economic cooperation for development through partnership; resolution 52/193 on the First United Nations Decade for the Eradication of Poverty; and resolution 52/194 on the role of microcredit in the eradication of poverty.

### (d) Crime prevention

On 12 December 1997, the General Assembly, on the recommendation of the Third Committee, adopted a number of resolutions on crime prevention. In resolution 52/85, the Assembly took note of the reports of the Secretary-General submitted to the Commission on Crime Prevention and Criminal Justice at its sixth session on the implementation of the Naples Political Declaration and

Global Action Plan against Organized Transnational Crime<sup>68</sup> and on the question of the elaboration of an international convention against organized transnational crime.<sup>69</sup> It also took note of the 40 recommendations elaborated and endorsed by the Senior Experts Group on Transnational Organized Crime (Lyon, France, 27-29 June 1996), contained in annex I to Economic and Social Council resolution 1997/22 of 21 July 1997; and also took note of the report of the informal meeting on the question of the elaboration of an international convention against organized transnational crime (Palermo, Italy, 6-8 April 1997).<sup>70</sup> By the same resolution, the General Assembly decided to establish an inter-sessional open-ended intergovernmental group of experts for the purpose of elaborating a preliminary draft of a possible comprehensive international convention against organized transnational crime. In its resolution 52/86, the Assembly took note of the report of the Secretary-General on the elimination of violence against women,<sup>71</sup> and adopted the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, the text of which follows:

### **Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice**

1. The multifaceted nature of violence against women suggests that different strategies are required for different manifestations of violence and the various settings in which it occurs. The practical measures, strategies and activities described below can be introduced in the field of crime prevention and criminal justice to deal with the problem of violence against women. Except where otherwise specified, the term "women" encompasses "girl children".

2. Recalling the definition of violence against women contained in the Declaration on the Elimination of Violence against Women<sup>72</sup> and reiterated in the Platform for Action adopted by the Fourth World Conference on Women,<sup>73</sup> the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice build upon the measures adopted by Governments in the Platform for Action, bearing in mind that some groups of women are especially vulnerable to violence.

3. The Model Strategies and Practical Measures specifically acknowledge the need for an active policy of bringing into the mainstream a gender perspective in all policies and programmes related to violence against women and of achieving gender equality and equal and fair access to justice, as well as establishing the goal of gender balance in areas of decision-making related to the elimination of violence against women. The Model Strategies and Practical Measures should be applied as guidelines in a manner consistent with relevant international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women,<sup>74</sup> the Convention on the Rights of the Child<sup>75</sup> and the International Covenant on Civil and Political Rights,<sup>76</sup> with a view to furthering their fair and effective implementation.

4. The Model Strategies and Practical Measures should be implemented by Member States and other entities, without prejudice to the principle of gender equality before the law, in order to facilitate the efforts by Governments to deal with the various manifestations of violence against women within the criminal justice system.

5. The Model Strategies and Practical Measures are aimed at providing *de jure* and *de facto* equality between women and men. The Model Strategies and Practical Measures do not give preferential treatment to women but are aimed at ensuring that any inequalities or forms of discrimination that women face in achieving access to justice, particularly in respect of acts of violence, are redressed.

## I. CRIMINAL LAW

### 6. Member States are urged:

- (a) To periodically review, evaluate and revise their laws, codes and procedures, especially their criminal laws, to ensure their value and effectiveness in eliminating violence against women and to remove provisions that allow for or condone violence against women;
- (b) To review, evaluate and revise their criminal and civil laws, within the framework of their national legal systems, in order to ensure that all acts of violence against women are prohibited and, if not, to adopt measures to do so;
- (c) To review, evaluate and revise their criminal laws in order to ensure that:
  - (i) Persons who are brought before the courts on judicial matters in respect of violent crimes or who are convicted of such crimes can be restricted in their possession and use of firearms and other regulated weapons, within the framework of their national legal systems;
  - (ii) Individuals can be prohibited or restrained, within the framework of their national legal systems, from harassing, intimidating or threatening women.

## II. CRIMINAL PROCEDURE

### 7. Member States are urged to review, evaluate and revise their criminal procedure, as appropriate, in order to ensure that:

- (a) The police have, with judicial authorization where required by national law, adequate powers to enter premises and conduct arrests in cases of violence against women, including confiscation of weapons;
- (b) The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence;
- (c) Women subjected to violence have an opportunity to testify in court proceedings equal to that of other witnesses and that measures are available to facilitate such testimony and to protect their privacy;
- (d) Rules and principles of defence do not discriminate against women and such defences as honour or provocation do not allow perpetrators of violence against women to escape all criminal responsibility;
- (e) Perpetrators who commit acts of violence against women while voluntarily under the influence of alcohol or drugs are not absolved of all criminal or other responsibility;
- (f) Evidence of prior acts of violence, abuse, stalking and exploitation by the perpetrator is considered during court proceedings, in accordance with the principles of national criminal law;
- (g) Courts, subject to the constitution of their State, have the authority to issue protection and restraining orders in cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile, and to impose penalties for breaches of these orders;
- (h) Measures can be taken when necessary to ensure the safety of victims and their families and to protect them from intimidation and retaliation;
- (i) Safety risks are taken into account in decisions concerning non-custodial or quasi-custodial sentences, the granting of bail, conditional release, parole or probation.

## III. POLICE

### 8. Member States are urged, within the framework of their national legal systems:

- (a) To ensure that the applicable provisions of laws, codes and procedures related to violence against women are consistently enforced in such a way that all criminal acts of



violence against women are recognized and responded to accordingly by the criminal justice system;

(b) To develop investigative techniques that do not degrade women subjected to violence and that minimize intrusion into their lives, while maintaining standards for the collection of the best evidence;

(c) To ensure that police procedures, including decisions on the arrest, detention and terms of any form of release of the perpetrator, take into account the need for the safety of the victim and others related through family, socially or otherwise, and that these procedures also prevent further acts of violence;

(d) To empower the police to respond promptly to incidents of violence against women;

(e) To ensure that the exercise of police powers is undertaken according to the rule of law and codes of conduct and that the police may be held accountable for any infringement thereof;

(f) To encourage women to join police forces, including at the operational level.

#### IV. SENTENCING AND CORRECTION

9. Member States are urged, as appropriate:

(a) To review, evaluate and revise sentencing policies and procedures in order to ensure that they meet the goals of:

- (i) Holding offenders accountable for their acts related to violence against women;
- (ii) Stopping violent behaviour;
- (iii) Taking into account the impact on victims and their family members of sentences imposed on perpetrators who are members of their families;
- (iv) Promoting sanctions that are comparable to those for other violent crimes;

(b) To ensure that a woman subjected to violence is notified of any release of the offender from detention or imprisonment where the safety of the victim in such disclosure outweighs invasion of the offender's privacy;

(c) To take into account in the sentencing process the severity of the physical and psychological harm and the impact of victimization, including through victim impact statements where such practices are permitted by law;

(d) To make available to the courts through legislation a full range of sentencing dispositions to protect the victim, other affected persons and society from further violence;

(e) To ensure that the sentencing judge is encouraged to recommend treatment of the offender at the time of sentencing;

(f) To ensure that there are appropriate measures in place to eliminate violence against women who are detained for any reason;

(g) To develop and evaluate offender treatment programmes for different types of offenders and offender profiles;

(h) To protect the safety of victims and witnesses before, during and after criminal proceedings.

#### V. VICTIM SUPPORT AND ASSISTANCE

10. Member States are urged, as appropriate:

(a) To make available to women who have been subjected to violence information on rights and remedies and on how to obtain them, in addition to information about participating in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings;

(b) To encourage and assist women subjected to violence in lodging and following through on formal complaints;

(c) To ensure that women subjected to violence receive, through formal and informal procedures, prompt and fair redress for the harm that they have suffered, including the right to seek restitution or compensation from the offenders or the State;

(d) To provide for court mechanisms and procedures that are accessible and sensitive to the needs of women subjected to violence and that ensure the fair processing of cases;

(e) To establish a registration system for judicial protection and restraining orders, where such orders are permitted by national law, so that police or criminal justice officials can quickly determine whether such an order is in force.

## VI. HEALTH AND SOCIAL SERVICES

11. Member States, in cooperation with the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:

(a) To establish, fund and coordinate a sustainable network of accessible facilities and services for emergency and temporary residential accommodation for women and their children who are at risk of becoming or who have been victims of violence;

(b) To establish, fund and coordinate services such as toll-free information lines, professional multidisciplinary counselling and crisis intervention services and support groups in order to benefit women who are victims of violence and their children;

(c) To design and sponsor programmes to caution against and prevent alcohol and substance abuse, given the frequent presence of alcohol and substance abuse in incidents of violence against women;

(d) To establish better linkages between medical services, both private and emergency, and criminal justice agencies for purposes of reporting, recording and responding to acts of violence against women;

(e) To develop model procedures to help participants in the criminal justice system to deal with women subjected to violence;

(f) To establish, where possible, specialized units with persons from relevant disciplines especially trained to deal with the complexities and victim sensitivities involved in cases of violence against women.

## VII. TRAINING

12. Member States, in cooperation with non-governmental organizations, including organizations seeking women's equality, and in collaboration with relevant professional associations, are urged, as appropriate:

(a) To provide for or to encourage mandatory cross-cultural and gender-sensitivity training modules for police, criminal justice officials, practitioners and professionals involved in the criminal justice system that deal with the unacceptability of violence against women, its impact and consequences and that promote an adequate response to the issue of violence against women;

(b) To ensure adequate training, sensitivity and education of police, criminal justice officials, practitioners and professionals involved in the criminal justice system regarding all relevant human rights instruments;

(c) To encourage professional associations to develop enforceable standards of practice and behaviour, which promote justice and equality for women, for practitioners involved in the criminal justice system.

## VIII. RESEARCH AND EVALUATION

13. Member States and the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, relevant entities of the United Nations sys-

tem, other relevant international organizations, research institutes and non-governmental organizations, including organizations seeking women's equality, are urged, as appropriate:

- (a) To develop crime surveys on the nature and extent of violence against women;
- (b) To gather data and information on a gender-disaggregated basis for analysis and use, together with existing data, in needs assessment, decision-making and policy-making in the field of crime prevention and criminal justice, in particular concerning:
  - (i) The different forms of violence against women, its causes and consequences;
  - (ii) The extent to which economic deprivation and exploitation are linked to violence against women;
  - (iii) The relationship between the victim and the offender;
  - (iv) The rehabilitative or anti-recidivistic effect of various types of intervention on the individual offender and on the reduction of violence against women;
  - (v) The use of firearms, drugs and alcohol, particularly in cases of violence against women in situations of domestic violence;
  - (vi) The relationship between victimization or exposure to violence and subsequent violent activity;
- (c) To monitor and issue annual reports on the incidence of violence against women, arrest and clearance rates, prosecution and case disposition of the offenders;
- (d) To evaluate the efficiency and effectiveness of the criminal justice system in fulfilling the needs of women subjected to violence.

#### IX. CRIME PREVENTION MEASURES

14. Member States and the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:

- (a) To develop and implement relevant and effective public awareness, public education and school programmes that prevent violence against women by promoting equality, cooperation, mutual respect and shared responsibilities between women and men;
- (b) To develop multidisciplinary and gender-sensitive approaches within public and private entities that participate in the elimination of violence against women, especially through partnerships between law enforcement officials and services specialized in the protection of women victims of violence;
- (c) To set up outreach programmes for offenders or persons identified as potential offenders in order to promote the peaceful resolution of conflicts, the management and control of anger and attitude modification about gender roles and relations;
- (d) To set up outreach programmes and offer information to women, including victims of violence, about gender roles, the human rights of women and the social, health, legal and economic aspects of violence against women, in order to empower women to protect themselves against all forms of violence;
- (e) To develop and disseminate information on the different forms of violence against women and the availability of programmes to deal with that problem, including programmes concerning the peaceful resolution of conflicts, in a manner appropriate to the audience concerned, including in educational institutions at all levels;
- (f) To support initiatives of organizations seeking women's equality and of non-governmental organizations to raise public awareness of the issue of violence against women and to contribute to its elimination.

15. Member States and the media, media associations, media self-regulatory bodies, schools and other relevant partners, while respecting the freedom of the media, are urged, as appropriate, to develop public awareness campaigns and appropriate measures and mechanisms, such as codes of ethics and self-regulatory measures on media violence, aimed at enhancing respect for the rights of women and discouraging both discrimination against women and stereotyping of women.

## X. INTERNATIONAL COOPERATION

16. Member States and United Nations bodies and institutes are urged, as appropriate:

(a) To exchange information concerning successful intervention models and preventive programmes in eliminating violence against women and to compile a directory of those models;

(b) To cooperate and collaborate at the regional and international levels with relevant entities to prevent violence against women and to promote measures to effectively bring perpetrators to justice, through mechanisms of international cooperation and assistance, in accordance with national law;

(c) To contribute to and support the United Nations Development Fund for Women in its activities to eliminate violence against women.

17. Member States are urged:

(a) To limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women to those that are formulated as precisely and as narrowly as possible and that are not incompatible with the object and purpose of the Convention;

(b) To condemn all violations of the human rights of women in situations of armed conflict, to recognize them as being violations of international human rights and humanitarian law and to call for a particularly effective response to violations of that kind, including, in particular, murder, systematic rape, sexual slavery and forced pregnancy;

(c) To work actively towards ratification of or accession to the Convention on the Elimination of All Forms of Discrimination against Women for the States that are still not parties to it, so that universal ratification can be achieved by the year 2000;

(d) To give full consideration to integrating a gender perspective in the drafting of the statute of the international criminal court, particularly in respect of women who are victims of violence;

(e) To cooperate with and assist the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences in the performance of his or her mandated tasks and duties, to supply all information requested and to respond to the Special Rapporteur's visits and communications.

## XI. FOLLOW-UP ACTIVITIES

18. Member States, United Nations bodies, subject to the availability of extrabudgetary funds, the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, other relevant international organizations, research institutes and non-governmental organizations, including organizations seeking women's equality, are urged, as appropriate:

(a) To encourage the translation of the Model Strategies and Practical Measures into local languages and to ensure its wide dissemination for use in training and education programmes;

(b) To utilize the Model Strategies and Practical Measures as a basis, a policy reference and a practical guide for activities aimed at eliminating violence against women;

(c) To assist Governments, at their request, in reviewing, evaluating and revising their criminal justice systems, including their criminal legislation, on the basis of the Model Strategies and Practical Measures;

(d) To support the technical cooperation activities of the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network in eliminating violence against women;

(e) To develop coordinated national, regional and subregional plans and programmes to put the Model Strategies and Practical Measures into effect;

(f) To design standard training programmes and manuals for the police and criminal justice officials, based on the Model Strategies and Practical Measures;

(g) To periodically review and monitor, at the national and international levels, progress made in terms of plans, programmes and initiatives to eliminate violence against women in the context of the Model Strategies and Practical Measures.

The General Assembly also adopted resolution 52/97 entitled "Violence against women migrant workers", in which it welcomed the report of the Secretary-General on the subject,<sup>77</sup> and encouraged Member States to consider signing and ratifying or acceding to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,<sup>78</sup> as well as the Slavery Convention of 1926.<sup>79</sup>

In its resolution 52/87, the General Assembly took note of the report of the Secretary-General on action against corruption and bribery<sup>80</sup> and of the report of the Expert Group Meeting on Corruption, held at Buenos Aires from 17 to 21 March 1997.<sup>81</sup> The Assembly also welcomed developments that had advanced international understanding and cooperation regarding bribery in transnational business, such as the Inter-American Convention against Corruption adopted by the Organization of American States on 29 March 1996,<sup>82</sup> containing an article on the prohibition of foreign commercial bribery; the ongoing work of the Council of Europe against corruption, including the elaboration of several international conventions containing provisions on bribery in international commercial transactions; the ongoing work of the World Trade Organization to improve transparency, openness and due process in government procurement procedures; and the ongoing work of the States members of the Organisation for Economic Cooperation and Development, including, as elements, the agreement to prohibit the tax deductibility of bribes paid to foreign public officials in international commercial transactions and the commitment to criminalize the bribing of foreign public officials in international business transactions. The General Assembly also agreed that all States should take all possible measures to further the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions<sup>83</sup> and the International Code of Conduct for Public Officials.<sup>84</sup>

The General Assembly furthermore adopted resolution 52/88 on international cooperation in criminal matters, covering areas of mutual assistance and extradition, and in that regard recommended that an expert group, in accordance with section I of Economic and Social Council resolution 1995/27 of 24 July 1995, should explore ways and means of increasing the efficiency of this type of international cooperation, having due regard for the rule of law and the protection of human rights, including by drafting alternative or complementary articles for the Model Treaty on Mutual Assistance in Criminal Matters,<sup>85</sup> developing model legislation and providing technical assistance in the development of agreements. The Assembly also decided that the Model Treaty on Extradition<sup>86</sup> should be complemented by the provisions as follows:

### **Complementary provisions for the Model Treaty on Extradition**

#### *Article 3*

1. Move the text of footnote 96 to the end of subparagraph (a) and add a new footnote reading: "Countries may wish to exclude certain conduct, e.g., acts of violence, such as serious offences involving an act of violence against the life, physical integrity or liberty of a person, from the concept of political offence."

2. Add the following sentence to footnote 97: "Countries may also wish to restrict consideration of the issue of lapse of time to the law of the requesting State only or to provide that acts of interruption in the requesting State should be recognized in the requested State."

#### *Article 4*

3. Add the following footnote to subparagraph (a): "Some countries may also wish to consider, within the framework of national legal systems, other means to ensure that those responsible for crimes do not escape punishment on the basis of nationality, such as, *inter alia*, provisions that would permit surrender for serious offences or permit temporary transfer of the person for trial and return of the person to the requested State for service of sentence."

4. Add to subparagraph (d) the same *aut dedere aut judicare* (either extradite or prosecute) provisions as are found in subparagraphs (a) and (f).

#### *Article 5*

5. Add the following footnote to the title of article 5: "Countries may wish to consider including the most advanced techniques for the communication of requests and means which could establish the authenticity of the documents as emanating from the requesting State."

6. Replace existing footnote 101 with the following text: "Countries requiring evidence in support of a request for extradition may wish to define the evidentiary requirements necessary to satisfy the test for extradition and in doing so should take into account the need to facilitate effective international cooperation."

#### *Article 6*

7. Add the following footnote to the title of article 6: "Countries may wish to provide for the waiver of speciality in the case of simplified extradition."

#### *Article 14*

8. Add the following footnote to subparagraph 1 (a): "Countries may also wish to provide that the rule of speciality is not applicable to extraditable offences provable on the same facts and carrying the same or a lesser penalty as the original offence for which extradition was requested."

9. Delete footnote 103.

10. Add the following footnote to paragraph 2: "Countries may wish to waive the requirement for the provision of some or all of these documents."

#### *Article 15*

11. Add the following sentence to footnote 105: "However, countries may wish to provide that transit should not be denied on the basis of nationality."

#### *Article 17*

12. Add the following sentence to footnote 106: "There may also be cases for consultation between the requesting and requested States for the payment by the requesting State of extraordinary costs, particularly in complex cases where there is a significant disparity in the resources available to the two States."

By its resolution 52/89, the General Assembly commended the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders for its efforts to promote and coordinate regional technical cooperation activities related to crime prevention and criminal justice systems in Africa. By its resolution 52/90, the Assembly reaffirmed the priority of the United Nations Crime Prevention and Criminal Justice Programme and requested the Secretary-General to further strengthen 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, held at Naples, Italy, from 21 to 23 November 1994,<sup>87</sup> and to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995.<sup>88</sup>

The General Assembly, by its resolution 52/91, took note of the report of the Commission on Crime Prevention and Criminal Justice on its sixth session<sup>89</sup> and of the discussion on the preparations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.<sup>90</sup>

(e) International action to combat drug abuse  
and illicit production and trafficking

*Status of international instruments*

During the course of 1997, one more State became a party to the 1961 Single Convention on Narcotic Drugs,<sup>91</sup> bringing the total number of parties to 139; six more States became parties to the 1971 Convention on Psychotropic Substances,<sup>92</sup> bringing the total to 153; two more States became parties to the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,<sup>93</sup> bringing the total to 107; and six more States became parties to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,<sup>94</sup> bringing the total to 145.

*Consideration by the General Assembly*

On 12 December 1997, the General Assembly adopted resolution 52/92, in which it called upon all States to adopt adequate national laws and regulations, to strengthen national judicial systems and to carry out effective drug control activities in cooperation with other States in accordance with the international instruments mentioned above; and reaffirmed the importance of the Global Programme of Action adopted by the General Assembly at its seventeenth special session on drugs<sup>95</sup> as a comprehensive framework for national, regional and international action to combat illicit production of, demand for and trafficking in narcotic drugs and psychotropic substances. In the same resolution, the Assembly took note of the report of the Commission on Narcotic Drugs acting as the preparatory body for the special session of the General Assembly devoted to the fight against the illicit production, sale, demand, traffic and distribution of narcotic drugs and psychotropic substances and related activities;<sup>96</sup> and decided that the special session would be held as recommended by the Economic and Social Council in its decision 1997/238 of 21 July 1997, from 8 to 10 June 1998, and that it should be supported by the United Nations System-wide Action Plan on Drug Abuse Control<sup>97</sup> as a vital tool for the coordination and enhancement of drug abuse control activities

within the United Nations system. Furthermore, the General Assembly welcomed the efforts of the United Nations International Drug Control Programme to implement its mandate within the framework of the international drug control treaties, the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control,<sup>98</sup> the Global Programme of Action and relevant consensus documents; and took note of the report of the Secretary-General.<sup>99</sup>

## (f) Human rights questions

### (1) *Status and implementation of international instruments*

#### (i) *International Covenants on Human Rights*

In 1997, two more States became parties to the International Covenant on Economic, Social and Cultural Rights of 1966,<sup>100</sup> bringing the total number of States parties to 137; four more States became parties to the International Covenant on Civil and Political Rights of 1966,<sup>101</sup> bringing the total to 140; four more States became parties to the Optional Protocol to the International Covenant on Civil and Political Rights of 1966,<sup>102</sup> bringing the total to 93; and two more States became parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty of 1989,<sup>103</sup> bringing the total to 31.

On 12 December 1997, the General Assembly, on the recommendation of the Third Committee, adopted resolution 52/116, in which it noted that the International Covenants on Human Rights constituted the first all-embracing and legally binding international treaties in the field of human rights and, together with the Universal Declaration of Human Rights,<sup>104</sup> formed the core of the International Bill of Human Rights; and, taking note of the report of the Secretary-General<sup>105</sup> on the status of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocols to the International Covenant on Civil and Political Rights, invited the United Nations High Commissioner for Human Rights to intensify systematic efforts to encourage States to become parties to the International Covenants on Human Rights and, through the programme of advisory services in the field of human rights, to assist such States, at their request, in ratifying or acceding to the Covenants and to the Optional Protocols to the International Covenant on Civil and Political Rights.

#### (ii) *International Convention on the Elimination of All Forms of Racial Discrimination of 1966*<sup>106</sup>

In 1997, two more States became parties to the Convention, bringing the total number of States parties to 150.

At its fifty-second session, the General Assembly, on 12 December 1997, on the recommendation of the Third Committee, adopted several resolutions in this area: resolution 52/109, entitled "Measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance", in which the Assembly took note of the report of the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia



and related intolerance;<sup>107</sup> resolution 52/110, entitled "Report of the Committee on the Elimination of Racial Discrimination",<sup>108</sup> and resolution 52/111, entitled "Third Decade to Combat Racism and Racial Discrimination and the convening of a world conference against racism, racial discrimination, xenophobia and related intolerance".

(iii) *International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973*<sup>109</sup>

In 1997, one more State became a party to the Convention, bringing the total number of States parties to 101.

(iv) *Convention on the Elimination of All Forms of Discrimination against Women of 1979*<sup>110</sup>

In 1997, seven more States became parties to the Convention, bringing the total number of States parties to 161.

At its fifty-second session, the General Assembly, on 12 December 1997, on the recommendation of the Third Committee, adopted a number of resolutions specifically targeting women, in addition to the two above-mentioned resolutions on elimination of violence against women: resolution 52/93, entitled "Improvement of the situation of women in rural areas"; resolution 52/94, entitled "United Nations Development Fund for Women"; resolution 52/95, entitled "International Research and Training Institute for the Advancement of Women"; resolution 52/96, entitled "Improvement of the status of women in the [United Nations] Secretariat"; and resolution 52/98, entitled "Traffic in women and girls". In the latter resolution, the General Assembly took note of the report of the Secretary-General on the traffic in women and girls,<sup>111</sup> welcomed national, regional and international efforts to implement the recommendations of the World Congress against Commercial Sexual Exploitation of Children<sup>112</sup> and also welcomed actions undertaken by Governments to implement the provisions on trafficking in women and girls contained in the Platform for Action of the Fourth World Conference on Women<sup>113</sup> and the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights.<sup>114</sup> The General Assembly also adopted resolution 52/99, entitled "Traditional or customary practices affecting the health of women and girls"; resolution 52/100, entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and the Platform for Action"; and resolution 52/106, entitled "The girl child". Moreover, the Assembly adopted decision 52/421, in which it took note of the following reports: report of the Committee on the Elimination of Discrimination against Women;<sup>115</sup> report of the Secretary-General on the Status of the Convention on the Elimination All Forms of Discrimination against Women;<sup>116</sup> and report of the Secretary-General on activities of the International Research and Training Institute for the Advancement of Women.<sup>117</sup>

(v) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984*<sup>118</sup>

In 1997, three more States became parties to the Convention, bringing the total number of States parties to 104.

(vi) *Convention on the Rights of the Child*<sup>119</sup>

In 1997, three more States became parties to the Convention, bringing the total number of States parties to 191.

At its fifty-second session, the General Assembly, on 12 December 1997, on the recommendation of the Third Committee, adopted resolution 52/107 on the rights of the child, covering the implementation of the Convention on the Rights of the Child; children with disabilities; prevention and eradication of the sale of children and of their sexual exploitation, including child prostitution and child pornography; protection of children affected by armed conflict; refugee and internally displaced children; elimination of the exploitation of child labour; and the plight of children living and/or working on the streets. On the same date, the Assembly also adopted decision 52/421, in which it took note of the Report of the Secretary-General on the status of the Convention on the Rights of the Child<sup>120</sup> and the report of the Secretary-General on the exploitation of child labour.<sup>121</sup>

(vii) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990*<sup>122</sup>

In 1997, one more State became a party to the Convention, bringing the total number of States parties to nine.

At its fifty-second session, the General Assembly, on 12 December 1997, on the recommendation of the Third Committee, adopted resolution 52/115, in which it took note of the report of the Secretary-General on the Convention.<sup>123</sup>

(2) *Fiftieth anniversary of the Universal Declaration of Human Rights of 1948*<sup>124</sup>

The General Assembly, on 12 December 1997, on the recommendation of the Third Committee, adopted resolution 52/117, in which it welcomed the activities undertaken by the United Nations High Commissioner for Human Rights to contribute to the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, and requested her to continue to coordinate all relevant activities within the United Nations system, bearing in mind the provisions of the Vienna Declaration and Programme of Action<sup>125</sup> for evaluation and follow-up; and reaffirmed its commitment to continue building on the inspiration of the Declaration through the development of international human rights standards and of mechanisms for their promotion and protection, taking into account developments over the past 50 years, including the adoption of the Declaration on the Right to Development.<sup>126</sup>

(3) *Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action*

At its fifty-second session, the General Assembly, on 12 December 1997, on the recommendation of the Third Committee, adopted resolution 52/148, in which it recalled its resolution 48/121 of 20 December 1993, in which it had endorsed the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, as well as its subsequent resolutions on this matter. It also recalled paragraph 100 of part II of the Vienna Declaration and Programme of Action concerning the five-year re-

view of progress made in the implementation of the Vienna Declaration and Programme of Action, to be carried out in 1998, in which the World Conference, inter alia, had requested the Secretary-General to invite, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, all States, organs and agencies of the United Nations system related to human rights to report to him on the progress made in the implementation of the Vienna Declaration and Programme of Action; and, having considered the report of the United Nations High Commissioner for Human Rights,<sup>127</sup> in particular chapter VII, entitled "1998—Human Rights Year", called upon all States to contribute actively to the 1998 five-year review.

#### (4) *Other human rights issues*

During the fifty-second session of the General Assembly, there were a number of other resolutions and decisions adopted, upon the recommendation of the Third Committee: resolution 52/118, entitled "Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights"; decision 52/422, entitled "Human rights questions"; decision 52/423, entitled "Documents considered by the General Assembly in connection with the implementation of human rights instruments"; decision 52/425, entitled "Documents considered by the General Assembly in connection with human rights questions: human rights situations and reports of special rapporteurs and representatives"; and decision 52/427, entitled "Report of the United Nations High Commissioner for Human Rights". Further resolutions adopted included: resolution 52/124, entitled "Human rights in the administration of justice"; resolution 52/125, entitled "Strengthening of the rule of law"; resolution 52/128, entitled "National institutions for the promotion and protection of human rights"; resolution 52/131, entitled "Strengthening of United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity"; and resolution 52/134, entitled "Enhancement of international cooperation in the field of human rights".

#### (g) *Refugee issues*

##### (1) *Status of international instruments*

During 1997, three more States became parties to the Convention Relating to the Status of Refugees of 1951,<sup>128</sup> bringing the total number of States parties to 131; three more States became parties to the Protocol Relating to the Status of Refugees of 1967,<sup>129</sup> bringing the total number of States parties to 131; and one more State became a party to the Convention Relating to the Status of Stateless Persons of 1954,<sup>130</sup> bringing the total number of States parties to 44. Regarding the Convention on the Reduction of Statelessness of 1961,<sup>131</sup> the number of States parties remained at 19.

##### (2) *Office of the United Nations High Commissioner for Refugees*<sup>132</sup>

The Executive Committee of the Programme of the United Nations High Commissioner for Refugees held its forty-eighth session at the United Nations

Office at Geneva from 13 to 17 October 1997 and adopted a number of decisions and conclusions concerning international protection; safeguarding asylum/safety of UNHCR staff and other humanitarian personnel; refugee children and adolescents; and follow-up to the Conference on the Commonwealth of Independent States.

### (3) *Consideration by the General Assembly*

At its fifty-second session, the General Assembly, on 12 December 1997, on the recommendation of the Third Committee, adopted a number of resolutions in this area, including resolution 52/101, entitled "Assistance to refugees, returnees and displaced persons in Africa"; resolution 52/105, entitled "Assistance to unaccompanied refugee minors"; and resolution 52/102, entitled "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". Also adopted were resolutions 52/103 and 52/104 on the Office of the United Nations High Commissioner for Refugees.

#### (h) International ad hoc criminal tribunals

The General Assembly, during its fifty-second session, adopted without reference to a Main Committee decision 52/408 of 4 November 1997, by which it took note of the fourth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991,<sup>133</sup> and decision 54/412 of 8 December 1997, by which it took note of the second annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.<sup>134</sup>

#### (i) Protection of United Nations personnel

At its fifty-second session, the General Assembly, on 12 December 1997, on the recommendation of the Third Committee, adopted resolution 52/126, in which, guided by the relevant principles on protection contained in the Convention on the Privileges and Immunities of the United Nations,<sup>135</sup> the Convention on the Privileges and Immunities of the Specialized Agencies<sup>136</sup> and the Convention on the Safety of United Nations and Associated Personnel,<sup>137</sup> and noting that since its adoption on 9 December 1994, only 43 Member States had signed the Convention on the Safety of United Nations and Associated Personnel and only 14 had ratified it, the Assembly took note of the report of the Secretary-General on the situation of United Nations personnel and their families<sup>138</sup> and of the developments indicated therein. By the same resolution, the Assembly urged all States: (a) to respect and ensure respect for the human rights of United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation and to take the necessary measures to ensure the safety and security of those personnel, as well as the inviolability of United Nations premises, which were essential to the continuation and successful implementation of United

Nations operations; and (b) to ensure the speedy release of United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation who had been arrested or detained in violation of their immunity, in accordance with the above-mentioned relevant conventions and applicable international humanitarian law; and called upon all States: (a) to consider becoming parties to the Convention on the Safety of United Nations and Associated Personnel; (b) to provide adequate and prompt information concerning the arrest or detention of United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation; (c) to grant the representative of the competent international organization immediate and unconditional access to such personnel; (d) to allow independent medical teams to investigate the health of detained United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation and to afford them the necessary medical assistance; and (e) to allow representatives of the competent international organization concerned to attend hearings involving United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation, provided that such attendance was consistent with domestic law.

(j) Return or restitution of cultural property  
to the countries of origin

The General Assembly, on 25 November 1997, without reference to a Main Committee, adopted resolution 52/24, in which, recalling the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,<sup>139</sup> welcoming the Medellín Declaration for Cultural Diversity and Tolerance and the Plan of Action on Cultural Cooperation adopted at the First Meeting of the Ministers of Culture of the Movement of Non-Aligned Countries, held at Medellín, Colombia, in 1997; and taking note of the report of the Secretary-General,<sup>140</sup> the Assembly commended UNESCO and the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation on the work already accomplished, in particular through the promotion of bilateral negotiations, for the return or restitution of cultural property, the preparation of inventories of movable cultural property, the reduction of illicit traffic in cultural property and the dissemination of information to the public.

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#### 4. LAW OF THE SEA

(a) Status of the United Nations Convention  
on the Law of the Sea of 1982<sup>141</sup>

In 1997, 13 more States became parties to the Convention, bringing the total number of States parties to 123.

### (b) Report of the Secretary-General<sup>142</sup>

The report of the Secretary-General on the law of the sea was submitted to the General Assembly at its fifty-second session and covers a number of areas related to oceans and the law of the sea.

The report pointed out that the International Tribunal for the Law of the Sea, having been established with the election of the 21 members on 1 August 1996,<sup>143</sup> commenced its functions in Hamburg, Germany, and held three sessions. A fourth session would be held in October 1997.<sup>144</sup> Regarding the constitution of the Chambers, the Tribunal also had constituted three standing chambers in addition to the Seabed Disputes Chamber: Chamber of Summary Procedure; Chamber for Fisheries Disputes; and Chamber for Marine Environment Disputes.

The report of the Secretary-General noted that a number of cases concerning disputes over maritime areas were still pending before the International Court of Justice.<sup>145</sup>

There also was discussion on the report on crimes at sea (privacy and armed robbery) and the smuggling of aliens.

### (c) Consideration by the General Assembly

At its fifty-second session, the General Assembly, on 26 November 1997, without reference to a Main Committee, adopted a number of resolutions on the topic. By its resolution 52/26, entitled "Oceans and the law of the sea", the Assembly noted the progress in the work of the International Seabed Authority and the progress being made by the Legal and Technical Commission towards the formulation of a draft mining code, and also noted the adoption of the Agreement on the Privileges and Immunities of the Tribunal,<sup>146</sup> the progress made towards the conclusion of a headquarters agreement between the Tribunal and Germany and the adoption by the Tribunal of the Rules of the Tribunal, the resolution on internal judicial practice and the guidelines for the preparation and presentation of cases before the Tribunal. By its resolution 52/27, the Assembly approved the Agreement concerning the Relationship between the United Nations and the International Seabed Authority.<sup>147</sup>

By its resolution 52/28, the General Assembly took note of the report of the Secretary-General<sup>148</sup> and recognized the significance of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks<sup>149</sup> as an important contribution to ensuring the conservation and management of straddling fish stocks and highly migratory fish stocks, and emphasized the importance of the early entry into force and effective implementation of the Agreement.

Finally, by its resolution 52/29, the General Assembly, taking note of the report of the Secretary-General on large-scale pelagic drift-net fishing and its impact on the living marine resources of the world's oceans and seas, unauthorized fishing in zones of national jurisdiction and its impact on the living marine resources of the world's oceans and seas, and fisheries by-catch and discards and their impact on the sustainable use of the world's living marine resources,<sup>150</sup> reaffirmed the importance it attached to compliance with its resolution 46/215 of 20 December 1991, in particular to those provisions of the resolution calling for full implementation of a global moratorium on all large-scale pelagic drift-net fishing

on the high seas of the world's oceans and seas, including enclosed seas and semi-enclosed seas. It also 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 resolutions 46/215, 49/116 of 19 December 1994 and 51/36 of 9 December 1996, and urged them to enforce such measures fully. Furthermore, the Assembly 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.

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## 5. INTERNATIONAL COURT OF JUSTICE<sup>151, 152</sup>

### Cases before the Court<sup>153</sup>

#### 1. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*

By an Order of 30 October 1996 (*I.C.J. Reports 1996*, p. 800), 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. After Judge ad hoc Shahabuddeen had, in his turn, resigned, Bahrain chose Mr. Yves L. Fortier to sit as judge ad hoc.

By a letter dated 25 September 1997 Bahrain informed the Court that it challenged the authenticity of 81 documents produced by Qatar as annexes to its Memorial, and submitted detailed analyses in support of its challenge. Stating that the matter was "distinct and severable from the merits", Bahrain announced that it would disregard the content of these documents for the purposes of preparing its Counter-Memorial.

By a letter of 8 October 1997, Qatar stated that in its view the objections raised by Bahrain were linked to the merits, but that the Court could not "expect Qatar, at the present stage of preparation of its own Counter-Memorial, to comment on the detailed Bahraini allegations".

After Bahrain, in a subsequent letter, had stated that the use by Qatar of the challenged documents gave rise to "procedural difficulties that strike at the fundamentals of the orderly development of the case" and that a new development, relevant to assessment of the authenticity of the documents concerned, had taken place, the President of the Court held, on 25 November 1997, a meeting with the Parties at which it was agreed, inter alia, that the Counter-Memorials would not deal with the question of the authenticity of the documents produced by Qatar and that other pleadings would be submitted by the Parties at a later date.

The Counter-Memorials of the Parties were duly filed and exchanged on 23 December 1997.

2. *Oil Platforms (Islamic Republic of Iran v. United States of America)*

By an Order of 16 December 1996 (*I.C.J. Reports 1996*, p. 902), the President of the Court, taking into account 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 counterclaim, 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.”

By a letter of 2 October 1997 Iran informed the Court that it had “serious objections to the admissibility of the United States counterclaim”, taking the position that the counterclaim as formulated by the United States did not meet the requirements of Article 80, paragraph I, of the Rules of Court.

At a meeting which the Vice-President of the Court, Acting President, held on 17 October 1997 with the Agents of the Parties, it was agreed that their respective Governments would submit written observations on the question of the admissibility of the United States counterclaim.

After Iran and the United States, in communications dated 18 November and 18 December 1997, respectively, had submitted these written observations the Court, by an Order of 10 March 1998 (*I.C.J. Reports 1998*, p. 190), found that the counterclaim presented by the United States in its Counter-Memorial was admissible as such and formed part of the proceedings. It further directed Iran to submit a Reply and the United States to submit a Rejoinder, fixing the time limits for those pleadings at 10 September 1998 and 23 November 1999, respectively.

3. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*

By an Order of 23 July 1996 (*I.C.J. Reports 1996*, p. 797), 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 counterclaims, 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 od 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."

By a letter of 28 July 1997 Bosnia and Herzegovina informed the Court that "the Applicant [was] of the opinion that the counterclaim submitted by the Respondent . . . [did] not meet the criterion of Article 80, paragraph 1, of the Rules of Court and should therefore not be joined to the original proceedings".

At a meeting which the President of the Court held on 22 September 1997 with the Agents of the Parties, both Parties accepted that their respective Governments would submit written observations on the question of the admissibility of the Yugoslav counterclaims.

After Bosnia and Herzegovina and Yugoslavia, in communications dated 9 October and 23 October 1997, respectively, had submitted written observations, the Court, by an Order of 17 December 1997 (*I.C.J. Reports 1997*, p. 243), found that the counterclaims submitted by Yugoslavia in its Counter-Memorial were admissible as such and formed part of the proceedings. It further directed Bosnia and Herzegovina to submit a Reply and Yugoslavia to submit a Rejoinder, fixing the time limits for those pleadings at 23 January and 23 July 1998, respectively.

Judge ad hoc Kreća appended a declaration to the Order (ibid., pp. 262-271); Judge Koroma and Judge ad hoc Lauterpacht appended separate opinions (ibid., pp. 272-277 and 278-286); and Vice-President Weeramantry appended a dissenting opinion (ibid., pp. 287-297).

#### 4. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*

In November 1995, in Budapest and New York, the two Parties signed a "Protocol of Agreement" on the proposal of a visit by the Court, which, after dates had been fixed with the approval of the Court, was supplemented by Agreed Minutes on 3 February 1997.

By an Order of 5 February 1997 (*I.C.J. Reports 1997*, p. 3), the Court decided to "exercise its functions with regard to the obtaining of evidence by visiting a place or locality to which the case relates" (cf. Art. 66 of the Rules of Court) and to "adopt to that end the arrangements proposed by the Parties". The visit, which was the first in the Court's 50-year history, took place from 1 to 4 April 1997, between the first and second rounds of oral hearings.

The first round of those hearings took place from 3 to 7 March and from 24 to 27 March 1997. A video-film was shown by each of the Parties. The second round took place on 10 and 11 and on 14 and 15 April 1997.

At a public sitting held on 25 September 1997, the Court delivered its judgment (*I.C.J. Reports 1997*, p. 7), a summary of which is given below, followed by the text of the operative paragraph:

##### *Review of the proceedings and statement of claims (paras. 1-14)*

The Court begins by recalling that proceedings had been instituted on 2 July 1993 by a joint notification, by Hungary and Slovakia, of a Special Agreement, signed at Brussels on 7 April 1993. After setting out the text of the Agreement, the Court recites the successive stages of the proceedings, referring, among other things, to its visit, on the invitation of the Parties, to the area, from 1 to 4 April 1997. It further sets out the submissions of the Parties.

##### *History of the dispute (paras. 15-25)*

The Court recalls that the present case arose out of the signature, on 16 September 1977, by the Hungarian People's Republic and the Czechoslovak People's Republic, of a treaty "concerning the construction and operation of the Gabčíkovo-Nagymaros System of Locks" (hereinafter called the "1977 Treaty"). The names of the two contracting States have varied over the years; they are referred to as Hungary and Czechoslovakia. The 1977 Treaty entered into force on 30 June 1978. It provides for the construction and operation of a System of Locks by the parties as a "joint investment". According to its preamble, the system was designed to attain "the broad utilization of the natural resources of the Bratislava-Budapest section of the Danube river for the development of water resources, energy, transport, agriculture and other sectors of the national economy of the Contracting Parties". The joint investment was thus essentially aimed at the production of hydroelectricity, the improvement of navigation on the relevant section of the Danube and the protection of the areas along the banks against flooding. At the same time, by the terms of the Treaty, the contracting parties un-

dertook to ensure that the quality of water in the Danube was not impaired as a result of the Project, and that compliance with the obligations for the protection of nature arising in connection with the construction and operation of the System of Locks would be observed.

The sector of the Danube river with which this case is concerned is a stretch of approximately 200 kilometres, between Bratislava in Slovakia and Budapest in Hungary. Below Bratislava, the river gradient decreases markedly, creating an alluvial plain of gravel and sand sediment. The boundary between the two States is constituted, in the major part of that region, by the main channel of the river. Čunovo and, further downstream, Gabčíkovo, are situated in this sector of the river on Slovak territory, Čunovo on the right bank and Gabčíkovo on the left. Further downstream, after the confluence of the various branches, the river enters Hungarian territory. Nagymaros lies in a narrow valley at a bend in the Danube just before it turns south, enclosing the large river island of Szentendre before reaching Budapest (see sketch-map No. 1).

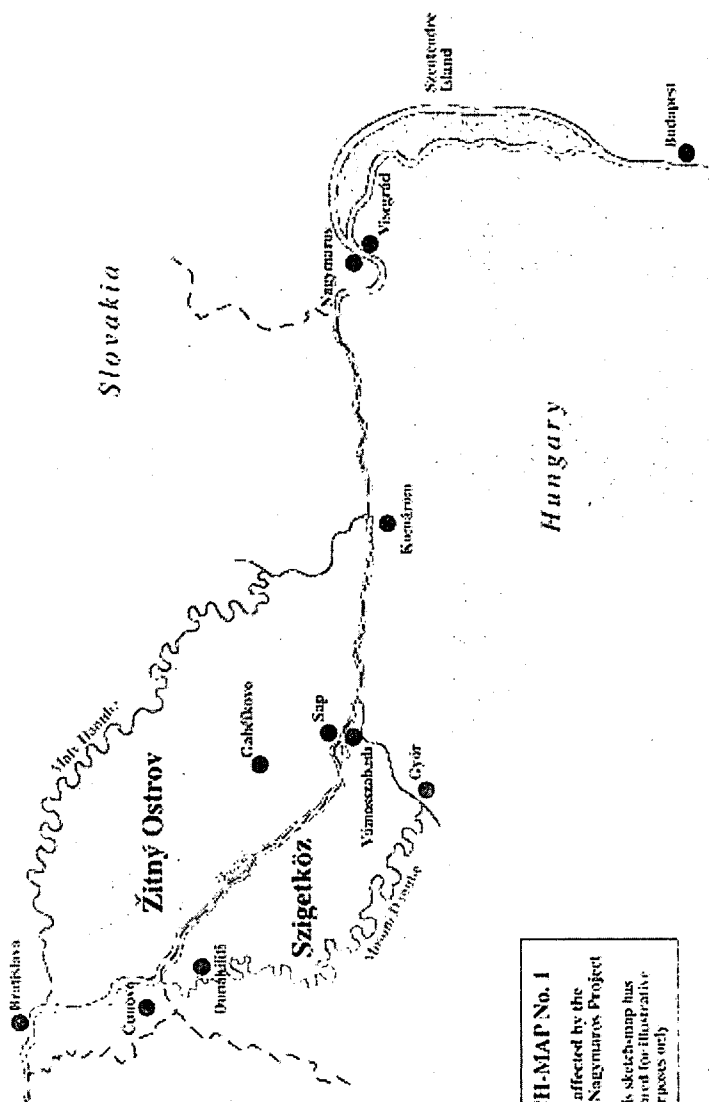
The 1977 Treaty describes the principal works to be constructed in pursuance of the Project. It provided for the building of two series of locks, one at Gabčíkovo (in Czechoslovak territory) and the other at Nagymaros (in Hungarian territory), to constitute "a single and indivisible operational system of works" (see sketch-map No. 2). The Treaty further provided that the technical specifications concerning the system would be included in the "Joint Contractual Plan" which was to be drawn up in accordance with the Agreement signed by the two Governments for this purpose on 6 May 1976. It also provided for the construction, financing and management of the works on a joint basis in which the Parties participated in equal measure.

The Joint Contractual Plan set forth, on a large number of points, both the objectives of the system and the characteristics of the works. It also contained "Preliminary Operating and Maintenance Rules", article 23 of which specified that "the final operating rules [should] be approved within a year of the setting into operation of the system".

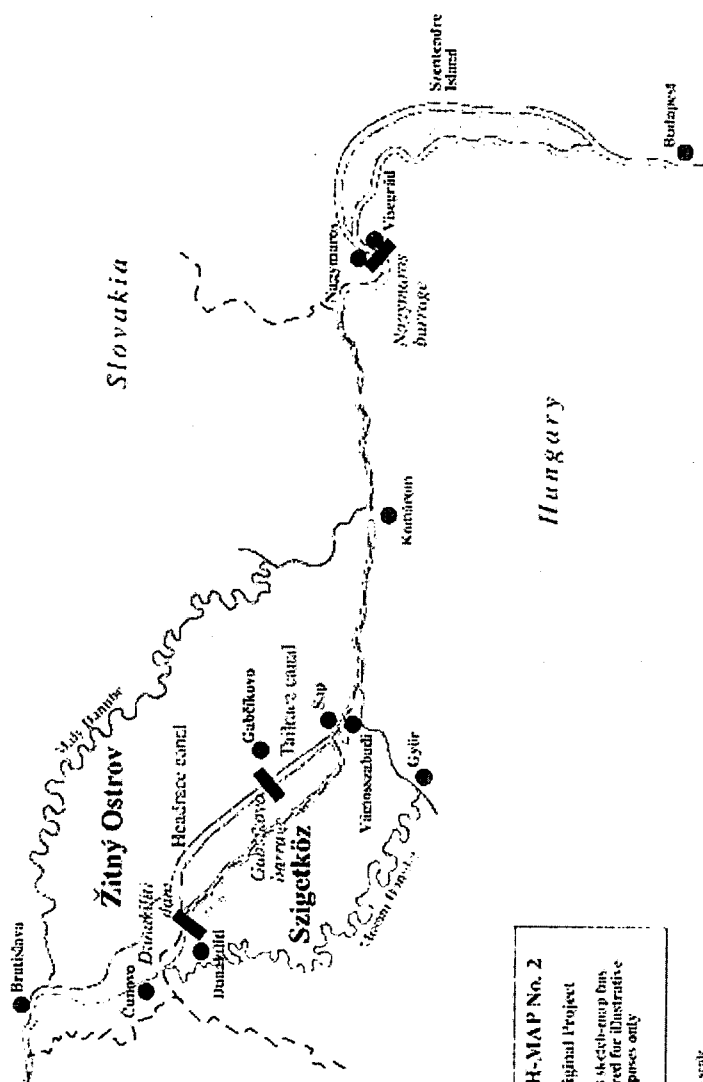
The Court observes that the Project was thus to have taken the form of an integrated joint project with the two contracting parties on an equal footing in respect of the financing, construction and operation of the works. Its single and indivisible nature was to have been realized through the Joint Contractual Plan which complemented the Treaty. In particular, Hungary would have had control of the sluices at Dunakiliti and the works at Nagymaros, whereas Czechoslovakia would have had control of the works at Gabčíkovo.

The schedule of work had for its part been fixed in an Agreement on mutual assistance signed by the two parties on 16 September 1977, at the same time as the Treaty itself. The Agreement made some adjustments to the allocation of the works between the parties as laid down by the Treaty. Work on the Project started in 1978. On Hungary's initiative, the two parties first agreed, by two Protocols signed on 10 October 1983, to slow the work down and to postpone putting into operation the power plants, and then, by a Protocol signed on 6 February 1989, to accelerate the Project.

As a result of intense criticism which the Project had generated in Hungary, the Hungarian Government decided on 13 May 1989 to suspend the works at Nagymaros pending the completion of various studies which the competent authorities were to finish before 31 July 1989. On 21 July 1989, the Hungarian Government extended the suspension of the works at Nagymaros until 31 October



Sketch-map not to scale



# **SKETCH-MAP No. 2**

The Original Project

N.B.: This sketch-map has been prepared for illustrative purposes only

Sketch-map not to scale

1989, and, in addition, suspended the works at Dunakiliti until the same date. Lastly, on 27 October 1989, Hungary decided to abandon the works at Nagymaros and to maintain the status quo at Dunakiliti.

During this period, negotiations took place between the Parties. Czechoslovakia also started investigating alternative solutions. One of them, an alternative solution subsequently known as "variant C", entailed a unilateral diversion of the Danube by Czechoslovakia on its territory some 10 kilometres upstream of Dunakiliti (see sketch-map No. 3). In its final stage, variant C included the construction at Čunovo of an overflow dam and a levee linking that dam to the south bank of the bypass canal. Provision was made for ancillary works.

On 23 July 1991, the Slovak Government decided "to begin, in September 1991, construction to put the Gabčíkovo Project into operation by the provisional solution". Work on variant C began in November 1991. Discussions continued between the two Parties but to no avail, and, on 19 May 1992, the Hungarian Government transmitted to the Czechoslovak Government a note verbale terminating the 1977 Treaty with effect from 25 May 1992. On 15 October 1992, Czechoslovakia began work to enable the Danube to be closed and, starting on 23 October, proceeded to the damming of the river.

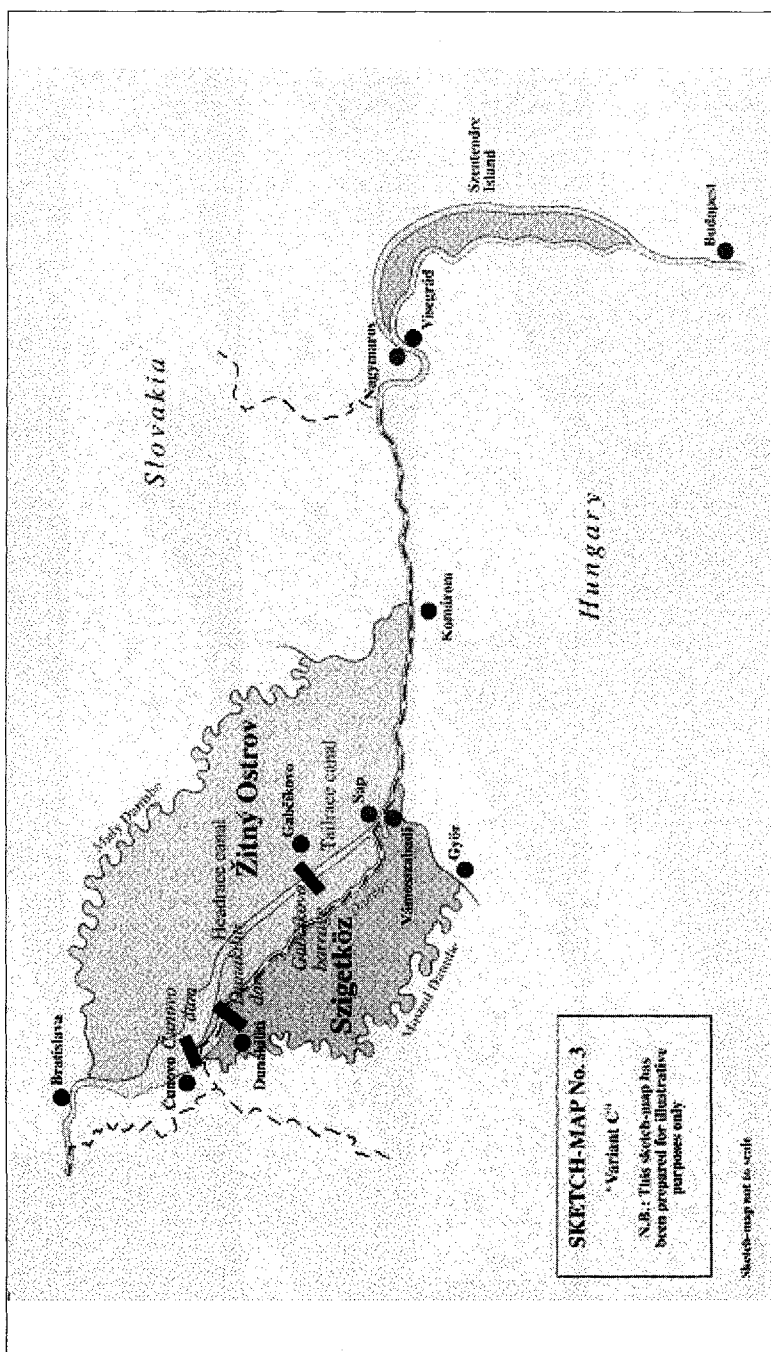
The Court finally takes note of the fact that on 1 January 1993 Slovakia became an independent State; that in the Special Agreement thereafter concluded between Hungary and Slovakia the Parties agreed to establish and implement a temporary water management regime for the Danube; and that finally they concluded an Agreement in respect of it on 19 April 1995, which would come to an end 14 days after the judgment of the Court. The Court also observes that not only the 1977 Treaty but also the "related instruments" are covered in the preamble to the Special Agreement and that the Parties, when concentrating their reasoning on the 1977 Treaty, appear to have extended their arguments to the "related instruments".

*Suspension and abandonment by Hungary, in 1989, of works on the Project (paras. 27-59)*

In terms of article 2, paragraph 1 (a), of the Special Agreement, the Court is requested to decide first

"whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary".

The Court observes that it has no need to dwell upon the question of the applicability or non-applicability in the present case of the Vienna Convention of 1969 on the Law of Treaties, as argued by the Parties. It needs only to be mindful of the fact that it has several times had occasion to hold that some of the rules laid down in that Convention might be considered as a codification of existing customary law. The Court takes the view that in many respects this applies to the provisions of the Vienna Convention concerning the termination and the suspension of the operation of treaties, set forth in articles 60 to 62. Neither has the Court lost sight of the fact that the Vienna Convention is in any event applicable to the Protocol of 6 February 1989 whereby Hungary and Czechoslovakia agreed to accelerate completion of the works relating to the Gabčíkovo-Nagymaros Project.



Nor does the Court need to dwell upon the question of the relationship between the law of treaties and the law of State responsibility, to which the Parties devoted lengthy arguments, as those two branches of international law obviously have a scope that is distinct. A determination of whether a convention is or is not in force, and whether it has or has not been properly suspended or denounced, is to be made pursuant to the law of treaties. On the other hand, an evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of State responsibility.

The Court cannot accept Hungary's argument to the effect that, in 1989, in suspending and subsequently abandoning the works for which it was still responsible at Nagymaros and at Dunakiliti, it did not suspend the application of the 1977 Treaty itself or then reject that Treaty. The conduct of Hungary at that time can only be interpreted as an expression of its unwillingness to comply with at least some of the provisions of the Treaty and the Protocol of 6 February 1989, as specified in the Joint Contractual Plan. The effect of Hungary's conduct was to render impossible the accomplishment of the system of works that the Treaty expressly described as "single and indivisible".

The Court then considers the question of whether there was, in 1989, a state of necessity which would have permitted Hungary, without incurring international responsibility, to suspend and abandon works that it was committed to perform in accordance with the 1977 Treaty and related instruments.

The Court observes, first of all, that the state of necessity is a ground recognized by customary international law for precluding the wrongfulness of an act not in conformity with an international obligation. It considers moreover that such ground for precluding wrongfulness can only be accepted on an exceptional basis. The following basic conditions set forth in article 33 of the draft articles on international responsibility of States by the International Law Commission are relevant in the present case: it must have been occasioned by an "essential interest" of the State which is the author of the act conflicting with one of its international obligations; that interest must have been threatened by a "grave and imminent peril"; the act being challenged must have been the "only means" of safeguarding that interest; that act must not have "seriously impair[ed] an essential interest" of the State towards which the obligation existed; and the State which is the author of that act must not have "contributed to the occurrence of the state of necessity". Those conditions reflect customary international law.

The Court has no difficulty in acknowledging that the concerns expressed by Hungary for its natural environment in the region affected by the Gabčíkovo-Nagymaros Project related to an "essential interest" of that State.

It is of the view, however, that, with respect to both Nagymaros and Gabčíkovo, the perils invoked by Hungary, without prejudging their possible gravity, were not sufficiently established in 1989, nor were they "imminent"; and that Hungary had available to it at that time means of responding to these perceived perils other than the suspension and abandonment of works with which it had been entrusted. What is more, negotiations were under way which might have led to a review of the Project and the extension of some of its time limits, without there being need to abandon it.

The Court further notes that Hungary, when it decided to conclude the 1977 Treaty, was presumably aware of the situation as then known; and that the need to ensure the protection of the environment had not escaped the parties. Neither can



it fail to note the positions taken by Hungary after the entry into force of the 1977 Treaty. The Court infers that, in the present case, even if it had been established that there was, in 1989, a state of necessity linked to the performance of the 1977 Treaty, Hungary would not have been permitted to rely upon that state of necessity in order to justify its failure to comply with its treaty obligations, as it had helped, by act or omission, to bring it about.

In the light of the conclusions reached above, the Court finds that Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the 1977 Treaty and related instruments attributed responsibility to it.

*Czechoslovakia's proceeding, in November 1991, to "variant C" and putting into operation, from October 1992, this variant (paras. 60-88)*

By the terms of article 2, paragraph 1 (b), of the Special Agreement, the Court is asked in the second place to decide

"(b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the 'provisional solution' and to put into operation from October 1992 this system".

Czechoslovakia had maintained that proceeding to variant C and putting it into operation did not constitute internationally wrongful acts; Slovakia adopted this argument. During the proceedings before the Court, Slovakia contended that Hungary's decision to suspend and subsequently abandon the construction of works at Dunakiliti had made it impossible for Czechoslovakia to carry out the works as initially contemplated by the 1977 Treaty and that the latter was therefore entitled to proceed with a solution which was as close to the original Project as possible. Slovakia invoked what it described as a "principle of approximate application" to justify the construction and operation of variant C. It explained that this was the only possibility remaining to it "of fulfilling not only the purposes of the 1977 Treaty, but the continuing obligation to implement it in good faith".

The Court observes that it is not necessary to determine whether there is a principle of international law or a general principle of law of "approximate application" because, even if such a principle existed, it could by definition only be employed within the limits of the treaty in question. In the view of the Court, variant C does not meet that cardinal condition with regard to the 1977 Treaty.

As the Court has already observed, the basic characteristic of the 1977 Treaty is, according to article 1, to provide for the construction of the Gabčíkovo-Nagymaros System of Locks as a joint investment constituting a single and indivisible operational system of works. This element is equally reflected in articles 8 and 10 of the Treaty providing for joint ownership of the most important works of the Gabčíkovo-Nagymaros Project and for the operation of this joint property as a coordinated single unit. By definition all this could not be carried out by unilateral action. In spite of having a certain external physical similarity with the original Project, variant C thus differed sharply from it in its legal characteristics. The Court accordingly concludes that Czechoslovakia, in putting variant C into operation, was not applying the 1977 Treaty but, on the contrary, violated certain of its express provisions, and, in so doing, committed an internationally wrongful act.

The Court notes that between November 1991 and October 1992, Czechoslovakia confined itself to the execution, on its own territory, of the works which were necessary for the implementation of variant C, but which could have been abandoned if an agreement had been reached between the parties and did not therefore predetermine the final decision to be taken. For as long as the Danube had not been unilaterally dammed, variant C had not in fact been applied. Such a situation is not unusual in international law or, for that matter, in domestic law. A wrongful act or offence is frequently preceded by preparatory actions which are not to be confused with the act or offence itself. It is as well to distinguish between the actual commission of a wrongful act (whether instantaneous or continuous) and the conduct prior to that act which is of a preparatory character and which "does not qualify as a wrongful act".

Slovakia also maintained that it was acting under a duty to mitigate damages when it carried out variant C. It stated that "it is a general principle of international law that a party injured by the non-performance of another contract party must seek to mitigate the damage he has sustained". But the Court observes that, while this principle might thus provide a basis for the calculation of damages, it could not, on the other hand, justify an otherwise wrongful act. The Court further considers that the diversion of the Danube carried out by Czechoslovakia was not a lawful countermeasure because it was not proportionate.

In the light of the conclusions reached above, the Court finds that Czechoslovakia was entitled to proceed, in November 1991, to variant C insofar as it then confined itself to undertaking works which did not predetermine the final decision to be taken by it. On the other hand, Czechoslovakia was not entitled to put that variant into operation from October 1992.

*Notification by Hungary, on 19 May 1992, of the termination of the 1977 Treaty and related instruments (paras. 89-115)*

By the terms of article 2, paragraph 1 (c), of the Special Agreement, the Court is asked, thirdly, to determine "what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary".

During the proceedings, Hungary presented five arguments in support of the lawfulness, and thus the effectiveness, of its notification of termination. These were the existence of a state of necessity; the impossibility of performance of the Treaty; the occurrence of a fundamental change of circumstances; the material breach of the Treaty by Czechoslovakia; and, finally, the development of new norms of international environmental law. Slovakia contested each of these grounds.

*State of necessity*

The Court observes that, even if a state of necessity is found to exist, it is not a ground for the termination of a treaty. It may only be invoked to exonerate from its responsibility a State which has failed to implement a treaty.

*Impossibility of performance*

The Court finds that it is not necessary to determine whether the term "object" in article 61 of the Vienna Convention of 1969 on the Law of Treaties (which speaks of "permanent disappearance or destruction of an object indispensable for the execution of the treaty" as a ground for terminating or withdrawing

from it) can also be understood to embrace a legal regime as in any event, even if that were the case, it would have to conclude that in this instance that regime had not definitively ceased to exist. The 1977 Treaty, and in particular its articles 15, 19 and 20, actually made available to the parties the necessary means to proceed at any time, by negotiation, to the required readjustments between economic imperatives and ecological imperatives.

#### *Fundamental change of circumstances*

In the Court's view, the prevalent political conditions were not so closely linked to the object and purpose of the Treaty that they constituted an essential basis of the consent of the parties and, in changing, radically altered the extent of the obligations still to be performed. The same holds good for the economic system in force at the time of the conclusion of the 1977 Treaty. Nor does the Court consider that new developments in the state of environmental knowledge and of environmental law can be said to have been completely unforeseen. What is more, the formulation of articles 15, 19 and 20 is designed to accommodate change. The changed circumstances advanced by Hungary are thus, in the Court's view, not of such a nature, either individually or collectively, that their effect would radically transform the extent of the obligations still to be performed in order to accomplish the Project.

#### *Material breach of the Treaty*

Hungary's main argument for invoking a material breach of the Treaty was the construction and putting into operation of variant C. The Court pointed out that it had already found that Czechoslovakia had violated the Treaty only when it diverted the waters of the Danube into the bypass canal in October 1992. In constructing the works which would lead to the putting into operation of variant C, Czechoslovakia did not act unlawfully. In the Court's view, therefore, the notification of termination by Hungary on 19 May 1992 was premature. No breach of the Treaty by Czechoslovakia had yet taken place and consequently Hungary was not entitled to invoke any such breach of the Treaty as a ground for terminating it when it did.

#### *Development of new norms of international environmental law*

The Court notes that neither of the Parties contended that new peremptory norms of environmental law had emerged since the conclusion of the 1977 Treaty; and the Court will consequently not be required to examine the scope of article 64 of the Vienna Convention on the Law of Treaties (which treats of the voidance and termination of a treaty because of the emergence of a new peremptory norm of general international law (*jus cogens*)). On the other hand, the Court wishes to point out that newly developed norms of environmental law are relevant for the implementation of the Treaty and that the parties could, by agreement, incorporate them through the application of articles 15, 19 and 20 of the Treaty. These articles do not contain specific obligations of performance but require the parties, in carrying out their obligations, to ensure that the quality of water in the Danube is not impaired and that nature is protected, to take new environmental norms into consideration when agreeing upon the means to be specified in the Joint Contractual Plan. By inserting these evolving provisions in the Treaty, the parties recognized the potential necessity to adapt the Project. Consequently, the Treaty is not static, and is open to adapt to emerging norms of international law. By means of articles 15 and 19, new environmental norms can be incorporated in the Joint Contractual Plan. The awareness of the vulnerability of the environment

and the recognition that environmental risks have to be assessed on a continuous basis have become much stronger in the years since the Treaty's conclusion. These new concerns have enhanced the relevance of articles 15, 19 and 20. The Court recognizes that both Parties agree on the need to take environmental concerns seriously and to take the required precautionary measures, but they fundamentally disagree on the consequences this has for the joint Project. In such a case, third-party involvement may be helpful and instrumental in finding a solution, provided each of the Parties is flexible in its position.

Finally, the Court is of the view that, although it has found that both Hungary and Czechoslovakia failed to comply with their obligations under the 1977 Treaty, this reciprocal wrongful conduct did not bring the Treaty to an end nor justify its termination.

In the light of the conclusions it has reached above, the Court finds that the notification of termination by Hungary of 19 May 1992 did not have the legal effect of terminating the 1977 Treaty and related instruments.

#### *Dissolution of Czechoslovakia (paras. 117-124)*

The Court then turns to the question whether Slovakia became a party to the 1977 Treaty as successor to Czechoslovakia. As an alternative argument, Hungary contended that, even if the Treaty survived the notification of termination, in any event it ceased to be in force as a treaty on 31 December 1992, as a result of the "disappearance of one of the parties". On that date Czechoslovakia ceased to exist as a legal entity, and on 1 January 1993 the Czech Republic and the Slovak Republic came into existence.

The Court does not find it necessary for the purposes of the present case to enter into a discussion of whether or not article 34 of the 1978 Vienna Convention on Succession of States in Respect of Treaties (in which a rule of automatic succession to all treaties is provided for) reflects the state of customary international law. More relevant to its present analysis is the particular nature and character of the 1977 Treaty. An examination of that Treaty confirms that, aside from its undoubted nature as a joint investment, its major elements were the proposed construction and joint operation of a large, integrated and indivisible complex of structures and installations on specific parts of the respective territories of Hungary and Czechoslovakia along the Danube. The Treaty also established the navigational regime for an important sector of an international waterway, in particular the relocation of the main international shipping lane to the bypass canal. In so doing, it inescapably created a situation in which the interests of other users of the Danube were affected. Furthermore, the interests of third States were expressly acknowledged in article 18, whereby the parties undertook to ensure "uninterrupted and safe navigation on the international fairway" in accordance with their obligations under the Convention of 18 August 1948 concerning the Regime of Navigation on the Danube.

The Court then refers to article 12 of the 1978 Vienna Convention on Succession of States in Respect of Treaties, which reflects the principle that treaties of a territorial character have been regarded both in traditional doctrine and in modern opinion as unaffected by a succession of States. The Court considers that article 12 reflects a rule of customary international law; and notes that neither of the Parties disputed this. It concludes that the content of the 1977 Treaty indicates that it must be regarded as establishing a territorial regime within the meaning of

article 12 of the 1978 Vienna Convention. It created rights and obligations "attaching to" the parts of the Danube to which it relates; thus the Treaty itself could not be affected by a succession of States. The Court therefore concludes that the 1977 Treaty became binding upon Slovakia on 1 January 1993.

*Legal consequences of the judgment (paras. 125-154)*

The Court observes that the part of its judgment which answers the questions in article 2, paragraph 1, of the Special Agreement has a declaratory character. It deals with the *past* conduct of the Parties and determines the lawfulness or unlawfulness of that conduct between 1989 and 1992 as well as its effects on the existence of the Treaty. Now the Court has, on the basis of the foregoing findings, to determine what the *future* conduct of the Parties should be. This part of the judgment is prescriptive rather than declaratory because it determines what the rights and obligations of the Parties are. The Parties will have to seek agreement on the modalities of the execution of the judgment in the light of this determination, as they agreed to do in article 5 of the Special Agreement.

In this regard it is of cardinal importance that the Court has found that the 1977 Treaty is still in force and consequently governs the relationship between the Parties. That relationship is also determined by the rules of other relevant conventions to which the two States are party, by the rules of general international law and, in this particular case, by the rules of State responsibility; but it is governed, above all, by the applicable rules of the 1977 Treaty as a *lex specialis*. The Court observes that it cannot, however, disregard the fact that the Treaty has not been fully implemented by either party for years, and indeed that their acts of commission and omission have contributed to creating the factual situation that now exists. Nor can it overlook that factual situation, or the practical possibilities and impossibilities to which it gives rise, when deciding on the legal requirements for the future conduct of the Parties. What is essential, therefore, is that the factual situation as it has developed since 1989 shall be placed within the context of the preserved and developing treaty relationship, in order to achieve its object and purpose insofar as that is feasible. For it is only then that the irregular state of affairs which exists as the result of the failure of both Parties to comply with their treaty obligations can be remedied.

The Court points out that the 1977 Treaty is not only a joint investment project for the production of energy, but it was designed to serve other objectives as well: the improvement of the navigability of the Danube, flood control and regulation of ice-discharge, and the protection of the natural environment. In order to achieve these objectives, the parties accepted obligations of conduct, obligations of performance and obligations of result. The Court is of the opinion that the Parties are under a legal obligation, during the negotiations to be held by virtue of article 5 of the Special Agreement, to consider, within the context of the 1977 Treaty, in what way the multiple objectives of the Treaty can best be served, keeping in mind that all of them should be fulfilled.

It is clear that the Project's impact upon, and its implications for, the environment are of necessity a key issue. In order to evaluate the environmental risks, current standards must be taken into consideration. This is not only allowed by the wording of articles 15 and 19, but even prescribed, to the extent that these articles impose a continuing, and thus necessarily evolving, obligation on the parties to maintain the quality of the water of the Danube and to protect nature. The Court

is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage. New norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. For the purposes of the present case, this means that the Parties together should look afresh at the effects on the environment of the operation of the Gabčíkovo power plant. In particular they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river.

What is required in the present case by the rule *pacta sunt servanda*, as reflected in article 26 of the Vienna Convention of 1969 on the Law of Treaties, is that the Parties find an agreed solution within the cooperative context of the Treaty. Article 26 combines two elements, which are of equal importance. It provides that "every treaty in force is binding upon the parties to it and must be performed by them in good faith". This latter element, in the Court's view, implies that, in this case, it is the purpose of the Treaty, and the intentions of the Parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized.

The 1977 Treaty not only contains a joint investment programme, it also establishes a regime. According to the Treaty, the main structures of the System of Locks are the joint property of the Parties; their operation will take the form of a coordinated single unit; and the benefits of the Project shall be equally shared. Since the Court has found that the Treaty is still in force and that, under its terms, the joint regime is a basic element, it considers that, unless the Parties agree otherwise, such a regime should be restored. The Court is of the opinion that the works at Čunovo should become a jointly operated unit within the meaning of article 10, paragraph 1, in view of their pivotal role in the operation of what remains of the Project and for the water-management regime. The dam at Čunovo has taken over the role which was originally destined for the works at Dunakiliti, and therefore should have a similar status. The Court also concludes that variant C, which it considers operates in a manner incompatible with the Treaty, should be made to conform to it. It observes that re-establishment of the joint regime will also reflect in an optimal way the concept of common utilization of shared water resources for the achievement of the several objectives mentioned in the Treaty.

Having thus far indicated what in its view should be the effects of its finding that the 1977 Treaty is still in force, the Court turns to the legal consequences of the internationally wrongful acts committed by the Parties, as it had also been asked by both Parties to determine the consequences of the judgment as they bear upon payment of damages.

The Court has not been asked at this stage to determine the quantum of damages due, but to indicate on what basis they should be paid. Both Parties claimed to have suffered considerable financial losses and both claim pecuniary compensation for them.

In the judgment, the Court has concluded that both Parties committed internationally wrongful acts, and it has noted that those acts gave rise to the damage sustained by the Parties; consequently, Hungary and Slovakia are both under an

obligation to pay compensation and are both entitled to obtain compensation. The Court observes, however, that given the fact that there have been intersecting wrongs by both Parties, the issue of compensation could satisfactorily be resolved in the framework of an overall settlement if each of the Parties were to renounce or cancel all financial claims and counterclaims. At the same time, the Court wishes to point out that the settlement of accounts for the construction of the works is different from the issue of compensation, and must be resolved in accordance with the 1977 Treaty and related instruments. If Hungary is to share in the operation and benefits of the Čunovo complex, it must pay a proportionate share of the building and running costs.

\*

*Operative paragraph (para. 155)*

“For these reasons,

THE COURT,

(1) Having regard to article 2, paragraph 1, of the Special Agreement,

A. By fourteen votes to one,

*Finds* that Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty of 16 September 1977 and related instruments attributed responsibility to it;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; *Judge ad hoc* Skubiszewski;

AGAINST: *Judge* Herczegh;

B. By nine votes to six,

*Finds* that Czechoslovakia was entitled to proceed, in November 1991, to the ‘provisional solution’ as described in the terms of the Special Agreement;

IN FAVOUR: *Vice-President* Weeramantry, *Judges* Oda, Guillaume, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans; *Judge ad hoc* Skubiszewski;

AGAINST: *President* Schwebel; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Rezek;

C. By ten votes to five,

*Finds* that Czechoslovakia was not entitled to put into operation, from October 1992, this ‘provisional solution’;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Kooijmans, Rezek;

AGAINST: *Judges* Oda, Koroma, Vereshchetin, Parra-Aranguren; *Judge ad hoc* Skubiszewski;

D. By eleven votes to four,

*Finds* that the notification, on 19 May 1992, of the termination of the Treaty of 16 September 1977 and related instruments by Hungary did not have the legal effect of terminating them;

IN FAVOUR: *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans; *Judge ad hoc* Skubiszewski;

AGAINST: *President* Schwebel; *Judges* Herczegh, Fleischhauer, Rezek;

(2) Having regard to article 2, paragraph 2, and article 5 of the Special Agreement,

A. By twelve votes to three,

*Finds* that Slovakia, as successor to Czechoslovakia, became a party to the Treaty of 16 September 1977 as from 1 January 1993;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans; *Judge ad hoc* Skubiszewski;

AGAINST: *Judges* Herczegh, Fleischhauer, Rezek;

B. By thirteen votes to two,

*Finds* that Hungary and Slovakia must negotiate in good faith in the light of the prevailing situation, and must take all necessary measures to ensure the achievement of the objectives of the Treaty of 16 September 1977, in accordance with such modalities as they may agree upon;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; *Judge ad hoc* Skubiszewski;

AGAINST: *Judges* Herczegh, Fleischhauer;

C. By thirteen votes to two,

*Finds* that, unless the Parties otherwise agree, a joint operational regime must be established in accordance with the Treaty of 16 September 1977;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; *Judge ad hoc* Skubiszewski;

AGAINST: *Judges* Herczegh, Fleischhauer;

D. By twelve votes to three,

*Finds* that, unless the Parties otherwise agree, Hungary shall compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible; and Slovakia shall compensate Hungary for the



damage it has sustained on account of the putting into operation of the 'provisional solution' by Czechoslovakia and its maintenance in service by Slovakia;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Parra-Aranguren, Kooijmans, Rezek; *Judge ad hoc* Skubiszewski;

AGAINST: *Judges* Oda, Koroma, Vereshchetin;

E. By thirteen votes to two,

*Finds* that the settlement of accounts for the construction and operation of the works must be effected in accordance with the relevant provisions of the Treaty of 16 September 1977 and related instruments, taking due account of such measures as will have been taken by the Parties in application of points 2 B and C of the present operative paragraph.

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; *Judge ad hoc* Skubiszewski;

AGAINST: *Judges* Herczegh, Fleischhauer."

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President Schwebel and Judge Rezek appended declarations to the judgment of the Court (*I.C.J. Reports* 1997, pp. 85 and 86-87); Vice-President Weeramantry, Judges Bedjaoui and Koroma appended separate opinions (*ibid.*, pp. 88-119, 120-141 and 142-152); Judges Oda, Ranjeva, Herczegh, Fleischhauer, Vereshchetin and Parra-Aranguren and Judge ad hoc Skubiszewski appended dissenting opinions (*ibid.*, pp. 153-169, 170-175, 176-203, 204-218, 219-226, 227-231 and 232-241).

#### 5. *Kasikili/Sedudu Island (Botswana/Namibia)*

By an Order of 24 June 1996 (*I.C.J. Reports* 1996, p. 63), 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 and a Counter-Memorial were filed by each of the Parties within the prescribed time limits.

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#### *Consideration by the General Assembly*

The General Assembly, by its decision 52/405 of 27 October 1997, took note of the report of the International Court of Justice.<sup>154</sup>

## 6. INTERNATIONAL LAW COMMISSION<sup>155</sup>

### (a) Forty-ninth session of the Commission<sup>156</sup>

The International Law Commission held its forty-ninth session at its seat at the United Nations Office at Geneva, from 12 May to 18 July 1997. The Commission considered the following agenda items.

Regarding the topic on nationality in relation to the succession of States, the Commission had before it the Special Rapporteur's third report,<sup>157</sup> containing a set of 25 draft articles with commentaries. The Commission considered the third report and then referred the draft articles to the Drafting Committee, and after considering the report of the Drafting Committee it adopted on first reading a drafting preamble and a set of 27 draft articles on the topic. The Commission transmitted the draft articles, through the Secretary-General, to Governments for comments and observations.

Concerning the item on reservations to treaties, the Commission again considered the Special Rapporteur's second report on the topic<sup>158</sup> and adopted the text of the Preliminary Conclusions of the Commission on reservations to normative multilateral treaties including human rights treaties adopted by the Commission.<sup>159</sup>

With respect to State responsibility, the Commission established a Working Group to address matters dealing with the second reading of the topic, and appointed a Special Rapporteur for the topic.

The Commission also established a Working Group to consider how to proceed with its work on international liability for injurious consequences arising out of acts not prohibited by international law, and in this regard reviewed the work of the Commission on the topic since 1978. On the basis of the recommendation of the Working Group, the Commission decided to proceed with its work undertaking first prevention under the subtitle "Prevention of transboundary damage from hazardous activities", and to appoint a Special Rapporteur for this part of the topic.

The Commission also established a Working Group to further examine the topic of diplomatic protection and to indicate the scope and content of the topic in the light of comments and observations made by Governments. The Commission appointed a Special Rapporteur for the topic, and recommended that he submit, at the next session, a preliminary report on the basis of the outline proposed by the Working Group.

The Commission also established a Working Group on the topic concerning unilateral acts of States, and appointed a Special Rapporteur. The Commission entrusted the Special Rapporteur with the task of preparing a general outline of the topic, which would be included in an initial report to be submitted for discussion in 1998.

### (b) Consideration by the General Assembly

At its fifty-second session, the General Assembly, on 15 December 1997, on the recommendation of the Sixth Committee, adopted resolution 52/156, in which it took note of the report of the International Law Commission and drew the atten-

tion of Governments to the importance for the Commission of having their views on all specific issues identified in the report.

The General Assembly also recommended that, taking into account the comments of Governments, the Commission should continue its work on the topics in its current programme, and endorsed the decision of the Commission to include in its agenda the topics "Diplomatic protection" and "Unilateral acts of States". The Assembly moreover expressed its appreciation to the Secretary-General for the organization of a colloquium on the progressive development and codification of international law, held on 28 and 29 October 1997 in commemoration of the fiftieth anniversary of the establishment of the Commission.<sup>160</sup>

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## 7. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW<sup>161</sup>

### (a) Thirtieth session of the Commission<sup>162</sup>

The United Nations Commission on International Trade Law held its thirtieth session in Vienna from 12 to 30 May 1997, and adopted its report on 30 May.

During the session, the Commission finalized the substantive consideration of the draft UNCITRAL Model Provisions on Cross-Border Insolvency, submitted to it by the Working Group on Insolvency Law. Minor drafting changes were made and the name was changed to Model Law instead of Model Provisions.<sup>163</sup> In order to assist States in enacting and applying the Model Law, a Guide to Enactment of the UNCITRAL Model Law was prepared by the United Nations Secretariat.<sup>164</sup>

Considering that the implementation of privately financed infrastructure projects required a favourable legal framework and in order to foster the confidence of potential investors, both national and foreign, while protecting public interests, the Commission had decided in 1996 to prepare a legislative guide on build-operate-transfer (BOT) and related types of projects. At the current session, the Commission had before it a table of contents setting out topics proposed to be covered by the legislative guide.<sup>165</sup> The table of contents had been prepared by the United Nations Secretariat for the purpose of enabling the Commission to make an informed decision on the proposed structure of the draft legislative guide and its content.

In the area of electronic commerce, the Commission entrusted the Working Group on Electronic Commerce with the preparation of uniform rules on the legal issues of digital signatures and certification authorities. With respect to the exact scope and form of such uniform rules, it was generally agreed that no decision could be made at such an early stage of the process. It was felt that, while the Working Group might appropriately focus its attention on the issues of digital signatures in view of the apparently predominant role played by public-key cryptography in the emerging electronic-commerce practice, the uniform rules to be prepared should be consistent with the media-neutral approach taken in the UNCITRAL Model Law on Electronic Commerce. Thus, the uniform rules should not discourage the use of other authentication techniques. Moreover, in dealing with public-key cryptography, the uniform rules might need to accommodate various levels of security and to recognize the various legal effects and levels

of liability corresponding to the various types of services being provided in the context of digital signatures. With respect to certification authorities, while the value of market-driven standards was recognized by the Commission, it was widely felt that the Working Group might appropriately envisage the establishment of a minimum set of standards to be met by certification authorities, particularly where cross-border certification was sought.

As an additional item to be considered in the context of future work in this area, it was suggested that the Working Group might need to discuss the issues of jurisdiction, applicable law and dispute settlement on the Internet.

On the topic of the draft Convention on Assignment in Receivables Financing, the Commission had before it the reports on the twenty-fifth and twenty-sixth sessions of the Working Group on International Contract Practices.<sup>166</sup> It was noted that the Working Group had reached agreement in principle on a number of issues, including the validity of bulk assignments of present and future receivables, the time of transfer of receivables, non-assignment clauses, representations of the assignor and protection of the debtor. The main outstanding issues included effects of the assignment on third parties, i.e., creditors of the assignor and the administrator in the insolvency of the assignor, as well as scope and conflict-of-laws issues.

Concerning the subject of Case Law on UNCITRAL Texts (CLOUT), the Commission noted that since its twenty-ninth session, in 1996, three additional sets of abstracts with court decisions and arbitral awards, relating to the United Nations Convention on Contracts for the International Sale of Goods of 1980,<sup>167</sup> the United Nations Convention on the Carriage of Goods by Sea of 1978 (Hamburg Rules)<sup>168</sup> and the UNCITRAL Model Law on International Commercial Arbitration of 1985 had been published.<sup>169</sup>

The Commission also noted that a search engine had been placed on the web site of UNCITRAL ([www.un.or.at/uncitral](http://www.un.or.at/uncitral)) to enable CLOUT users to perform a search into CLOUT cases and other documents.

### (b) Consideration by the General Assembly

At its fifty-second session, the General Assembly, on 15 December 1997, on the recommendation of the Sixth Committee, adopted resolution 52/157, in which it took note of the report of the work of the United Nations Commission on International Trade Law,<sup>170</sup> and commended the Commission for the progress it had made in its work, including the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.<sup>171</sup> On the same date, also on the recommendation of the Sixth Committee, the Assembly adopted resolution 52/158, in which it requested the Secretary-General to transmit the text of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, together with the Guide to Enactment of the Model Law, to Governments and interested bodies, and recommended that all States review their legislation on cross-border aspects of insolvency to determine whether the legislation met the objectives of a modern and efficient insolvency system and, in that review, give favourable consideration to the Model Law. The text of the Model Law reads as follows:

**Model Law on Cross-Border Insolvency of the United Nations  
Commission on International Trade Law**

**PREAMBLE**

The purpose of the present Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

- (a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;
- (b) Greater legal certainty for trade and investment;
- (c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- (d) Protection and maximization of the value of the debtor's assets;
- (e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

**CHAPTER I. GENERAL PROVISIONS**

*Article 1*

*Scope of application*

1. The present Law applies where:

- (a) Assistance is sought in this State by a foreign court or a foreign representative in connection with a foreign proceeding; or
- (b) Assistance is sought in a foreign State in connection with a proceeding under [*identify laws of the enacting State relating to insolvency*]; or
- (c) A foreign proceeding and a proceeding under [*identify laws of the enacting State relating to insolvency*] in respect of the same debtor are taking place concurrently; or
- (d) Creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participation in, a proceeding under [*identify laws of the enacting State relating to insolvency*].

2. The present Law does not apply to a proceeding concerning [*designate any types of entities, such as banks or insurance companies, that are subject to a special insolvency regime in this State and that this State wishes to exclude from the present Law*].

*Article 2*

*Definitions*

For the purposes of the present Law:

- (a) "Foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;
- (b) "Foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (c) "Foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of the present article;
- (d) "Foreign representative" means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

(e) “Foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;

(f) “Establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

### Article 3

#### *International obligations of this State*

To the extent that the present Law conflicts with an obligation of this State arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

### Article 4

#### *[Competent court or authority]<sup>a</sup>*

The functions referred to in the present Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by *[specify the court, courts, authority or authorities competent to perform those functions in the enacting State]*.

### Article 5

#### *Authorization of [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] to act in a foreign State*

A *[insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State]* is authorized to act in a foreign State on behalf of a proceeding under *[identify laws of the enacting State relating to insolvency]*, as permitted by the applicable foreign law.

### Article 6

#### *Public policy exception*

Nothing in the present Law prevents the court from refusing to take an action governed by the present Law if the action would be manifestly contrary to the public policy of this State.

### Article 7

#### *Additional assistance under other laws*

Nothing in the present Law limits the power of a court or a *[insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State]* to provide additional assistance to a foreign representative under other laws of this State.

### Article 8

#### *Interpretation*

In the interpretation of the present 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.

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<sup>a</sup>A State where certain functions relating to insolvency proceedings have been conferred upon government-appointed officials or bodies might wish to include in article 4 or elsewhere in chapter I the following provision:

“Nothing in the present Law affects the provisions in force in this State governing the authority of *[insert the title of the government-appointed person or body]*.”

CHAPTER II. ACCESS OF FOREIGN REPRESENTATIVES  
AND CREDITORS TO COURTS IN THIS STATE

*Article 9*

*Right of direct access*

A foreign representative is entitled to apply directly to a court in this State.

*Article 10*

*Limited jurisdiction*

The sole fact that an application pursuant to the present Law is made to a court in this State by a foreign representative does not subject the foreign representative of the foreign assets and affairs of the debtor to the jurisdiction of the courts of this State for any purpose other than the application.

*Article 11*

*Application by a foreign representative to commence a proceeding under*  
[identify laws of the enacting State relating to insolvency]

A foreign representative is entitled to apply to commence a proceeding under [identify laws of the enacting State relating to insolvency] if the conditions for commencing such a proceeding are otherwise met.

*Article 12*

*Participation of a foreign representative in a proceeding under*  
[identify laws of the enacting State relating to insolvency]

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under [identify laws of the enacting State relating to insolvency].

*Article 13*

*Access of foreign creditors to a proceeding under*  
[identify laws of the enacting State relating to insolvency]

1. Subject to paragraph 2 of the present article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under [identify laws of the enacting State relating to insolvency] as creditors in this State.

2. Paragraph 1 of the present article does not affect the ranking of claims in a proceeding under [identify laws of the enacting State relating to insolvency], except that the claims of foreign creditors shall not be ranked lower than [identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g., claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims].<sup>b</sup>

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<sup>b</sup>The enacting State may wish to consider the following alternative wording to replace paragraph 2 of article 13:

“2. Paragraph 1 of the present article does not affect the ranking of claims in a proceeding under [identify laws of the enacting State relating to insolvency] or the exclusion of foreign tax and social security claims from such a proceeding. Nevertheless, the claims of foreign creditors other than those concerning tax and social security obligations shall not be ranked lower than [identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g., claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims].”

#### Article 14

##### *Notification to foreign creditors of a proceeding under [identify laws of the enacting State relating to insolvency]*

1. Whenever under *[identify law of the enacting State relating to insolvency]* notification is to be given to creditors in this State, such notification shall also be given to the known creditors that do not have addresses in this State. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

2. Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No rogatory letters or other similar formality is required.

3. When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

(a) Indicate a reasonable time period for filing claims and specify the place for their filing;

(b) Indicate whether secured creditors need to file their secured claims;

(c) Contain any other information required to be included in such a notification to creditors pursuant to the law of this State and the orders of the court.

#### CHAPTER III. RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

#### Article 15

##### *Application for recognition of a foreign proceeding*

1. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.

2. An application for recognition shall be accompanied by:

(a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or

(b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

3. An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

4. The court may require a translation of documents supplied in support of the application for recognition into an official language of this State.

#### Article 16

##### *Presumptions concerning recognition*

1. If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2 and that the foreign representative is a person or body within the meaning of subparagraph (d) of article 2, the court is entitled to so presume.

2. The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.



3. In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

### *Article 17*

#### *Decision to recognize a foreign proceeding*

1. Subject to article 6, a foreign proceeding shall be recognized if:
  - (a) The foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2;
  - (b) The foreign representative applying for recognition is a person or body within the meaning of subparagraph (d) of article 2;
  - (c) The application meets the requirements of paragraph 2 of article 15;
  - (d) The application has been submitted to the court referred to in article 4.
2. The foreign proceeding shall be recognized:
  - (a) As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
  - (b) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.
3. An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
4. The provisions of articles 15, 16, 17 and 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

### *Article 18*

#### *Subsequent information*

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:

- (a) Any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment;
- (b) Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

### *Article 19*

#### *Relief that may be granted upon application for recognition of a foreign proceeding*

1. From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:
  - (a) Staying execution against the debtor's assets;
  - (b) Entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
  - (c) Any relief mentioned in paragraph 1 (c), (d) and (g) of article 21 below.

2. *[Insert provisions (or refer to provisions in force in the enacting State) relating to notice.]*

3. Unless extended under paragraph 1 (f) of article 21, the relief granted under the present article terminates when the application for recognition is decided upon.

4. The court may refuse to grant relief under the present article if such relief would interfere with the administration of a foreign main proceeding.

## Article 20

### *Effects of recognition of a foreign main proceeding*

1. Upon recognition of a foreign proceeding that is a foreign main proceeding:

(a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;

(b) Execution against the debtor's assets is stayed;

(c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

2. The scope, and the modification or termination, of the stay and suspension referred to in paragraph 1 of the present article are subject to *[refer to any provisions of law of the enacting State relating to insolvency that apply to exceptions, limitations, modifications or termination in respect of the stay and suspension referred to in paragraph 1 of the present article]*.

3. Paragraph 1 (a) of the present article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

4. Paragraph 1 of the present article does not affect the right to request the commencement of a proceeding under *[identify laws of the enacting State relating to insolvency]* or the right to file claims in such a proceeding.

## Article 21

### *Relief that may be granted upon recognition of a foreign proceeding*

1. Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including:

(a) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1 (a) of article 20;

(b) Staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1 (b) of article 20;

(c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1 (c) of article 20;

(d) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(e) Entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court;

(f) Extending relief granted under paragraph 1 of article 19;

(g) Granting any additional relief that may be available to *[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]* under the laws of this State.

2. Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the

debtor's assets located in this State to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in this State are adequately protected.

3. In granting relief under the present article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

#### *Article 22*

##### *Protection of creditors and other interested persons*

1. In granting or denying relief under article 19 or 21, or in modifying or terminating relief under paragraph 3 of the present article, the court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

2. The court may subject relief granted under article 19 or 21 to conditions it considers appropriate.

3. The court may, at the request of the foreign representative or a person affected by relief granted under article 19 or 21, or at its own motion, modify or terminate such relief.

#### *Article 23*

##### *Actions to avoid acts detrimental to creditors*

1. Upon recognition of a foreign proceeding, the foreign representative has standing to initiate [*refer to the types of actions to avoid or otherwise render ineffective acts detrimental to creditors that are available in this State to a person or body administering a reorganization or liquidation*].

2. When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the action relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding.

#### *Article 24*

##### *Intervention by a foreign representative in proceedings in this State*

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of this State are met, intervene in any proceedings in which the debtor is a party.

### CHAPTER IV. COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

#### *Article 25*

##### *Cooperation and direct communication between a court of this State and foreign courts or foreign representatives*

1. In matters referred to in article 1, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a [*insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State*].

2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

## Article 26

*Cooperation and direct communication between the [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] and foreign courts or foreign representatives*

1. In matters referred to in article 1, a [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

2. The [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

## Article 27

### *Forms of cooperation*

Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including:

- (a) Appointment of a person or body to act at the direction of the court;
- (b) Communication of information by any means considered appropriate by the court;
- (c) Coordination of the administration and supervision of the debtor's assets and affairs;
- (d) Approval or implementation by courts of agreements concerning the coordination of proceedings;
- (e) Coordination of concurrent proceedings regarding the same debtor;
- (f) [The enacting State may wish to list additional forms or examples of cooperation].

## CHAPTER V. CONCURRENT PROCEEDINGS

## Article 28

*Commencement of a proceeding under [identify laws of the enacting State relating to insolvency] after recognition of a foreign main proceeding*

After recognition of a foreign main proceeding, a proceeding under [identify laws of the enacting State relating to insolvency] may be commenced only if the debtor has assets in this State; the effects of that proceeding shall be restricted to the assets of the debtor that are located in this State and, to the extent necessary to implement cooperation and coordination under articles 25, 26 and 27, to other assets of the debtor that, under the law of this State, should be administered in that proceeding.

## Article 29

*Coordination of a proceeding under [identify laws of the enacting State relating to insolvency] and a foreign proceeding*

Where a foreign proceeding and a proceeding under [identify laws of the enacting State relating to insolvency] are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

- (a) When the proceeding in this State is taking place at the time the application for recognition of the foreign proceeding is filed,

- (i) Any relief granted under article 19 or 21 must be consistent with the proceeding in this State;
- (ii) If the foreign proceeding is recognized in this State as a foreign main proceeding, article 20 does not apply;
- (b) When the proceeding in this State commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,
  - (i) Any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in this State;
  - (ii) If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph 1 of article 20 shall be modified or terminated pursuant to paragraph 2 of article 20 if inconsistent with the proceeding in this State;
- (c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

### *Article 30*

#### *Coordination of more than one foreign proceeding*

In matters referred to in article 1, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

- (a) Any relief granted under article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
- (b) If a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding;
- (c) If, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

### *Article 31*

#### *Presumption of insolvency based on recognition of a foreign main proceeding*

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under [identify laws of the enacting State relating to insolvency], proof that the debtor is insolvent.

### *Article 32*

#### *Rule of payment in concurrent proceedings*

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under [identify laws of the enacting State relating to insolvency] regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

## 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 items and submitted its recommendations thereon to the General Assembly at its fifty-second session. The Assembly subsequently, on 15 December 1997, adopted the following resolutions.

### (a) Convention on jurisdictional immunities of States and their property

The General Assembly, by its resolution 52/151, having considered the report of the Secretary-General,<sup>172</sup> decided to consider again at its fifty-third session the item entitled "Convention on jurisdictional immunities of States and their property" with a view to the establishment of a working group at its fifty-fourth session, taking into account the comments submitted by States in accordance with paragraph 2 of Assembly resolution 49/61 of 9 December 1994; and urged States, if they had not yet done so, to submit their comments to the Secretary-General in accordance with resolution 49/61.

### (b) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly, by its resolution 52/152, taking note of the report of the Secretary-General on the implementation of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law<sup>173</sup> and the guidelines and recommendations on future implementation of the Programme adopted by the Advisory Committee on the Programme and contained in section III of the report, approved the guidelines and recommendations contained in section III of the report of the Secretary-General and also approved the establishment of the United Nations Audiovisual Library in International Law as proposed by the Secretary-General in paragraph 89 and the annex to his report. It also authorized the Secretary-General to carry out in 1998 and 1999 the activities specified in his report. By the same resolution, the Assembly further reiterated its request to Member States and to interested organizations and individuals to make voluntary contributions, inter alia, for the International Law Seminar, the fellowship programme in international law, the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea and the United Nations Audiovisual Library in International Law, and expressed its appreciation to those Member States, institutions and individuals which had made voluntary contributions for that purpose; and urged in particular all Governments to make voluntary contributions for the organization of regional refresher courses in international law by the United Nations Institute for Training and Research.

### (c) United Nations Decade of International Law

The General Assembly, by its resolution 52/153, expressing its appreciation for the note submitted to the Secretary-General,<sup>174</sup> and having considered the note, as well as the oral report of the Chairman of the Working Group to the Sixth Committee,<sup>175</sup> expressed its appreciation for the work done on the United Nations Decade of International Law at the fifty-second session of the General Assembly, and requested the Working Group of the Sixth Committee to continue its work at the fifty-third session in accordance with its mandate and methods of work; and also expressed its appreciation to States and international organizations and institutions that had undertaken activities, including sponsoring conferences on various subjects of international law, in implementation of the programme for the activities for the final term (1997-1999) of the Decade.

### (d) Action dedicated to the 1999 centennial of the first International Peace Conference and to the closing of the United Nations Decade of International Law

The General Assembly, by its resolution 52/154, welcomed the programme of action dedicated to the centennial of the first International Peace Conference, presented by the Government of the Netherlands and the Russian Federation,<sup>176</sup> which aimed at contributing to the further development of the themes of the first and the second International Peace Conference and could be regarded as a third international peace conference; and requested the Secretary-General to ensure consistency of the activities of the Organization relating to the closing of the United Nations Decade of International Law with the programme of action and to direct his efforts accordingly.

### (e) Draft guiding principles for international negotiations

The General Assembly, by its resolution 52/155, reaffirming the provisions of the Declaration of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,<sup>177</sup> and bearing in mind that in their negotiations States should be guided by the relevant principles of international law, took note of the draft guiding principles for international negotiations contained in document A/152/141 and the comments and proposals made during the consideration of the question, including the need for its further consideration; and decided to continue the consideration of the question in the Working Group on the United Nations Decade of International Law during the fifty-third session of the General Assembly.

### (f) Report of the Committee on Relations with the Host Country

The General Assembly, by its resolution 52/159, endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 118 of its report,<sup>178</sup> and considered that the maintenance of appropriate conditions for the normal work of the delegations and the missions accredited to the United Nations was in the interests of the United Nations and all Member States, and requested the host country to continue to take all measures necessary to prevent any interference with the functioning of missions, and to promote the compliance of local authorities with international norms concerning

diplomatic privileges and immunities. The Assembly also 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 co-operation and in accordance with international law.

(g) Establishment of an international criminal court

The General Assembly, by its resolution 52/160, accepted the generous offer of the Government of Italy to act as host to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court; and decided that the Conference, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, should be held at Rome from 15 June to 17 July 1998, with a view to finalizing and adopting a convention on the establishment of an international criminal court, and requested the Secretary-General to invite those States to the Conference.

(h) 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 52/161, 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;<sup>179</sup> and requested the Special Committee, at its session in 1998, in accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995:

(a) To continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations and, in that context, to consider other proposals relating to the maintenance of international peace and security already submitted or which might be submitted to the Special Committee at its session in 1998, including the revised proposal on the strengthening of the role of the United Nations in the maintenance of international peace and security,<sup>180</sup> the revised working paper on the strengthening of the role of the Organization and enhancing its effectiveness,<sup>181</sup> the revised working paper entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures"<sup>182</sup> and 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 conflicts;<sup>183</sup>

(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,<sup>184</sup> the proposals submitted on the subject, the debate on the question in the Sixth Committee during the fifty-second session of the General Assembly and the text on the question of sanctions imposed by the United Nations contained in annex II to General Assembly resolution 51/242 of 15 September 1997, and also the implementation of the provisions of General Assembly resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996 and 52/152 of 15 December 1997;

(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; and

(d) To continue to consider proposals concerning the Trusteeship Council in the light of the report of the Secretary-General submitted in accordance with Assembly resolution 50/55 of 11 December 1995,<sup>185</sup> the report of the Secretary-General entitled "Renewing the United Nations: a programme for reform"<sup>186</sup> and the views expressed by States on this subject during the fifty-second 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, to make every effort to implement in a timely manner the steps proposed in paragraph 59 of his report<sup>187</sup> regarding the preparation and publication of the Supplements to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* with a view to updating them, and to submit a progress report on the matter to the General Assembly at its fifty-third session.

(i) Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

By its resolution 52/162, the General Assembly, taking note of the most recent report of the Secretary-General,<sup>188</sup> submitted in accordance with Assembly resolution 51/208 of 17 December 1996, welcomed once again the further measures taken by the Security Council since the adoption of General Assembly resolution 50/51 of 11 December 1995 aimed at increasing the effectiveness and transparency of the sanctions committees, invited the Council to implement those measures, and strongly recommended that the Council should continue its efforts further to enhance the functioning of those committees, to streamline their working procedures and to facilitate access to them by representatives of States that found themselves confronted with special economic problems arising from the carrying out of sanctions. The Assembly also endorsed the proposal of the Secretary-General that an ad hoc expert group meeting should be convened in the first half of 1998 with a view to developing a possible methodology for assessing the consequences actually incurred by third States as a result of preventive or enforcement measures, with due regard being given by the expert group to the particular problems and needs of developing countries confronted by the special economic problems arising from the carrying out of enforcement measures. The Assembly moreover endorsed the recommendation of the Secretary-General that the expert group should explore innovative and practical measures of assistance that could be provided by the relevant organizations both within and outside the United Nations system to the affected third States; and requested the Secretary-General to submit a report on the results of the expert group meeting to the General Assembly at its fifty-third session.

(j) Amendment to rule 103 of the rules of procedure  
of the General Assembly

By its resolution 52/163, the General Assembly, recalling its resolution 2837 (XXVI) of 17 December 1971, in particular paragraph 42 of annex II thereto, entitled "Conclusions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly"; taking into account the increasing workload of the Main Committees of the General Assembly; and considering that all regional groups should be represented in the Bureau of each of the Main Committees, decided to amend the first sentence of rule 103 of the rules of procedure of the General Assembly to read: "Each Main Committee shall elect a Chairman, three Vice-Chairmen and a Rapporteur"; and also decided that the amendment should take effect as from the fifty-third session of the General Assembly.

(k) International Convention for the Suppression  
of Terrorist Bombings

By its resolution 52/164, the General Assembly, recalling its resolution 49/60 of 9 December 1994, by which it had adopted the Declaration on Measures to Eliminate International Terrorism, and its resolution 51/210 of 17 December 1996, and having considered the text of the draft convention for the suppression of terrorist bombings prepared by the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996<sup>189</sup> and the Working Group of the Sixth Committee,<sup>190</sup> adopted the International Convention for the Suppression of Terrorist Bombings and decided to open it for signature at United Nations Headquarters in New York from 12 January 1998 until 31 December 1999; and urged all States to sign and ratify, accept or approve or accede to the Convention. The text of the Convention reads as follows:

**International Convention for the Suppression  
of Terrorist Bombings**

*The States Parties to this Convention,*

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

*Deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations,

*Recalling* the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,<sup>191</sup>

*Recalling also* the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, "the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States",

*Noting* that the Declaration also encouraged States "to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter",

*Recalling* General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

*Noting* that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

*Noting also* that existing multilateral legal provisions do not adequately address these attacks,

*Being convinced* of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

*Considering* that the occurrence of such acts is a matter of grave concern to the international community as a whole,

*Noting* that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

*Have agreed* as follows:

### *Article 1*

For the purposes of this Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.

3. "Explosive or other lethal device" means:

(a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or

(b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.

4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

5. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

## *Article 2*

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

- (a) With the intent to cause death or serious bodily injury; or
- (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person:

- (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2 of the present article; or
- (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2 of the present article; or
- (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

## *Article 3*

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1 or paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.

## *Article 4*

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

## *Article 5*

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

## *Article 6*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State; or

(b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or

(e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

#### *Article 7*

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6,

subparagraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

#### *Article 8*

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

#### *Article 9*

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention.

#### *Article 10*

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the

offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

#### *Article 11*

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

#### *Article 12*

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

#### *Article 13*

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions

anterior to his or her departure from the territory of the State from which such person was transferred.

#### *Article 14*

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

#### *Article 15*

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

(a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;

(b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as set forth in article 2;

(c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

#### *Article 16*

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

#### *Article 17*

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

#### *Article 18*

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

#### *Article 19*

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.



2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

#### *Article 20*

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### *Article 21*

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 22*

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### *Article 23*

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

## Article 24

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 12 January 1998.

### (l) Measures to eliminate international terrorism

The General Assembly, by its resolution 52/165, reaffirmed the mandate of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996; and decided that the Ad Hoc Committee should meet from 16 to 27 February 1998 to continue its work in accordance with the mandate provided in paragraph 9 of Assembly resolution 51/210, and recommended that the work should continue during the fifty-third session of the Assembly from 28 September to 9 October 1998 within the framework of a working group of the Sixth Committee.

### (m) Amendment to article 13 of the statute of the United Nations Administrative Tribunal

By its resolution 52/166, the General Assembly, having considered the note by the Secretary-General dated 17 September 1997 entitled "Amendment to article 13 of the statute of the United Nations Administrative Tribunal",<sup>192</sup> noting the proposal of the International Court of Justice referred to in that note that the statute of the Tribunal should be modified to provide for the exercise of its competence in respect of the staff of the Registry of the International Court of Justice; recognizing that the competence of the Tribunal in United Nations Joint Staff Pension Fund cases, as approved by the General Assembly in its resolution 955 (X) of 3 November 1955, was not reflected in the statute of the Tribunal; and noting the proposal of the Secretary-General, set out in the note, to amend the statute of the Tribunal by providing that its competence might be extended to international organizations and entities participating in the common system of conditions of service, decided to amend article 13 of the statute of the United Nations Administrative Tribunal, with effect from 1 January 1998, as follows:

#### (a) New paragraphs 1, 2 and 4 shall be inserted to read:

"1. The competence of the Tribunal shall be extended to the staff of the Registry of the International Court of Justice upon the exchange of letters between the President of the Court and the Secretary-General of the United Nations establishing the relevant conditions;

"2. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted to the Tribunal by:

(a) Any staff member of a member organization of the Fund which has accepted the jurisdiction of the Tribunal in Joint Staff Pension Fund cases who is eligible under article 21 of the Pension Fund regulations as a

participant in the Fund, even if his employment has ceased, and any person who has acceded to such staff member's rights upon his death;

(b) Any other person who can show that he is entitled to rights under the Pension Fund Regulations by virtue of the participation in the Fund of a staff member of such member organization;"

"4. The competence of the Tribunal may also be extended, with the approval of the General Assembly, to any other international organization or entity established by a treaty and participating in the common system of conditions of service, upon the terms set out in a special agreement between the organization or entity concerned and the Secretary-General of the United Nations. Each such special agreement shall provide that the organization or entity concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that organization or entity and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal";

(b) Former article 13 shall be renumbered paragraph 3 of article 13.

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## 9. UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH<sup>193</sup>

During the reporting period, UNITAR continued to carry out its training activities, including its programmes on multilateral diplomacy and international affairs management, designed for the benefit of members of permanent missions accredited to the United Nations at Geneva and Vienna; and in conjunction with the International Peace Academy, an annual course on peacekeeping and preventive diplomacy, offering advanced training in conflict analysis, negotiation and mediation to United Nations staff and diplomats. UNITAR also provides for self-paced correspondence courses on United Nations peacekeeping. Additional offerings include UNITAR's Programme of Training for the Application of Environmental Law; the International Migration Policy and Law courses; and the Training Programme in the Legal Aspects of Debt, Economics, Financial Management and Public Administration.

Under these programmes during 1997, individual courses or events included a workshop on the structure and drafting of United Nations resolutions (New York); an IOM/UNITAR workshop on mediation techniques (Pretoria); and the Cuba Scientific International Conference on Environmental Law (Holguín Province, Cuba).

### *Consideration by the General Assembly*

At its fifty-second session, the General Assembly, on 18 December 1997, on the recommendation of the Second Committee, adopted resolution 52/206, in which, having considering the report of the Secretary-General,<sup>194</sup> the report of the Board of Trustees of UNITAR on the activities of the Institute<sup>195</sup> and the report of the Joint Inspection Unit,<sup>196</sup> renewed its appeal to all Governments and to private

institutions that had not yet contributed financially or otherwise to the Institute to give it their generous financial support, and urged the States that had interrupted their voluntary contributions to consider resuming them in the light of the successful restructuring and revitalization of the Institute. The Assembly also stressed the need for an effective division of labour among the main training and research institutions of the United Nations system, taking into account the distinct and complementary mandates of the United Nations University, UNITAR and the United Nations Staff College Project, and in that regard noted the recommendations of the Joint Inspection Unit. It furthermore stressed the need for better coordination among the main training and research institutions of the United Nations system, and noted the recommendations of the Joint Inspection Unit; and also stressed in that regard the need for the General Assembly to consider all major issues in a coherent manner without prejudice to its resolution 50/227 of 24 May 1996.

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## **B. General review of the legal activities of intergovernmental organizations related to the United Nations\***

### **1. INTERNATIONAL LABOUR ORGANIZATION**

1. The International Labour Conference (ILC), which held its 83rd session in Geneva from 3 to 19 June 1997, adopted an instrument for the amendment of the Constitution of the International Labour Organization<sup>197</sup> to add a paragraph 9 to article 19 (Conventions and Recommendations) so as to enable the ILC to abrogate any Convention if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization.

2. The International Labour Conference also adopted several amendments to its Standing Orders.<sup>198</sup>

#### *Consequential and related amendments to the Constitutional Amendment*

(a) Amendment to article 11 (Procedure for the consideration of proposed Conventions, Recommendations and amendments to the Constitution), paragraph 1;

(b) Article 45bis (Procedure to be followed in the event of the abrogation or withdrawal of Conventions and Recommendations) has been added;

#### *Verification of credentials*

(a) Amendment to article 5 (Credentials Committee), paragraph 2;

(b) Amendment to article 26, paragraph 4a;

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\*The order of the organization reflects the chronological order, from earlier to most recent, of the effective date the United Nations entered into a relationship with the organization. All the organizations listed here are United Nations specialized agencies, except IAEA which is an autonomous intergovernmental organization under the aegis of the United Nations, and is listed last.

- (c) Three paragraphs have been added to article 26;

*Disqualification from voting of members which are in arrears in the payment of their contributions to the Organization*

(a) Amendment to article 32 (Period of validity of a decision to permit a member in arrears to vote), paragraph 2.

3. At its 85th session, the International Labour Conference also adopted a Convention (No. 181) and a Recommendation (No. 188) concerning Private Employment Agencies.<sup>199</sup>

4. The Committee of Experts on the Application of Conventions and Recommendations met in Geneva from 27 November to 12 December 1997 to adopt its report to the 86th Session of the International Labour Conference (1998).<sup>200</sup>

5. Representations were lodged under article 24 of the Constitution of the International Labour Organization alleging non-observance by Denmark of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98);<sup>201</sup> by the Russian Federation of the Protection of Wages Convention, 1949 (No. 95);<sup>202</sup> by Uruguay of the Occupational Health and Safety Convention, 1981 (No. 155);<sup>203</sup> by Denmark of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and the Employment Policy Convention, 1964 (No. 122);<sup>204</sup> by Hungary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Employment Policy Convention, 1964 (No. 122);<sup>205</sup> by Mexico<sup>206</sup> and Peru<sup>207</sup> of the Indigenous and Tribal Peoples Convention, 1989 (No. 169); by Spain of the Migration for Employment Convention (Revised), 1949 (No. 97), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Employment Policy Convention, 1964 (No. 122);<sup>208</sup> and by Turkey of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94).

6. The Governing Body decided, at its 268th session (March 1997), to refer the complaint, which 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),<sup>209</sup> to a Commission of Enquiry.<sup>210</sup>

7. The Governing Body of the International Labour Office, which met in Geneva, considered and adopted the following reports of its Committee on Freedom of Association: the 306th report<sup>211</sup> (268th session, March 1997), the 307th report<sup>212</sup> (269th session, June 1997) and the 308th report<sup>213</sup> (267th session, November 1997).

8. The Working Party on the Social Dimensions of the Liberalization of International Trade, established by the Governing Body of the ILO, held two meetings in 1997 during the 268th<sup>214</sup> (March 1997) and 270th<sup>215</sup> (November 1997) sessions of the Governing Body.

9. The Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards of the Governing Body held meetings in 1997 during the 268th<sup>216</sup> (March 1997) and 270th<sup>217</sup> (November 1997) sessions of the Governing Body of the ILO.

## 2. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

### (a) General constitutional and legal matters

#### (i) *Decisions taken at the 29th session of the FAO Conference (November 1997)*

##### a. *FAO Conference resolutions*

In resolution 9/97, the Conference decided on the following:

—Amendments to the Basic Texts

—Abolition of the Programme of Work and Budget outline and the joint meeting of the Programme and Finance Committees early in the second year of the biennium

In resolution 7/97, the Conference decided as follows:

#### *Amendments to rule XXXIII of the General Rules of the Organization (Committee on World Food Security)*

1. The Conference endorsed the recommendation of the Council, at its hundred and twelfth session (Rome, 2-7 June, 1997), that the mandate of the Committee on World Food Security (CFS) be amended. In that regard, the Conference noted that Commitment Seven of the Plan of Action adopted by the World Food Summit in November 1996 accorded a substantial role to the CFS in the monitoring of the Implementation of the Action Plan, and that this should be reflected in the mandate of the CFS, as set out in rule XXXIII of the General Rules of the Organization. The Conference further noted that amendments to the mandate of the CFS were required to reflect new responsibilities falling upon FAO as a result of the abolition of the World Food Council by the United Nations General Assembly, to reflect changes in institutional organizations in the United Nations system, such as the replacement of the Committee on Food Aid Policies and Programmes by the Executive Board of the World Food Programme, and to rationalize and modernize the terms of reference of the CFS in line with recent practice.

2. Consequently, the Conference adopted the following resolution:

### **RESOLUTION 8/97**

#### **Amendments to rule XXXIII of the General Rules of the Organization (Committee on World Food Security)**

THE CONFERENCE,

*Recalling* that rule XXXIII of the General Rules of the Organization establishing the Committee on World Food Security (CFS) and its terms of reference was adopted by the Conference at its eighteenth session in November 1975 (resolution 21/75),

*Recalling further* that Commitment Seven of the Plan of Action adopted by the World Food Summit in November 1996 accorded a substantial role to the CFS in the monitoring of the implementation of the Plan of Action,

*Considering* that the above-mentioned role should be reflected in the mandate of the CFS as set out in rule XXXIII of the General Rules of the Organization (GRO),

*Considering* that further changes to the wording of rule XXXIII GRO are required in order to reflect the new responsibilities falling upon FAO as a result of the abolition of the World Food Council by the United Nations General Assembly,

*Considering also* that further amendments are required in order to reflect changes in institutional organization in the United Nations system, such as the replacement of the Committee on Food Aid Policies and Programmes by the Executive Board of the World Food Programme, and to rationalize and modernize the terms of reference of the CFS in line with recent practice:

*Decides* to amend rule XXXIII of the General Rules of the Organization, Committee on World Food Security, as follows:

### *Rule XXXIII*

#### *Committee on World Food Security*

1. The Committee on World Food Security provided for in paragraph 6 of article V of the Constitution shall be open to all member nations of the Organization and all Member States of the United Nations. It shall be composed of those States which notify the Director-General in writing of their desire to become members of the Committee and of their intention to participate in the work of the Committee.

2. The notifications referred to in paragraph 1 may be made at any time, and membership acquired on the basis thereof shall be for a biennium. The Director-General shall circulate, at the beginning of each session of the Committee, a document listing the members of the Committee.

3. The Committee shall normally hold two sessions during each biennium. Sessions shall be convened by the Director-General, in consultation with the Chairman of the Committee, taking into account any proposals made by the Committee.

4. If required, the Committee may hold additional sessions on the call of the Director-General in consultation with its Chairman, or on request submitted in writing to the Director-General by the majority of members of the Committee.

5. The Committee shall contribute to promoting the objective of world food security with the aim of 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.

6. The Committee shall serve as a forum in the United Nations system for review and follow-up of policies concerning world food security, including food production, sustainable use of the natural resource base for food security, nutrition, physical and economic access to food and other food security related aspects of poverty eradication, the implications of food trade for world food security and other related matters and shall in particular:

(a) Examine major problems and issues affecting the world food situation and the steps being proposed or taken to resolve them by Governments and relevant international organizations, bearing in mind the need for the adoption of an integrated approach towards their solution;

(b) Examine the implications for world food security of other relevant factors, including the situation relating to the supply and demand of basic foodstuffs and food aid requirements and trends, the state of stocks in exporting and importing countries and issues relating to physical and economic access to food and other food security related aspects of poverty eradication; and

(c) Recommend such action as may be appropriate to promote the goal of world food security.

7. The Committee shall serve as the forum in the United Nations system for monitoring the implementation of the Plan of Action adopted by the World Food Summit in accordance with the relevant commitment of the Summit.

8. The Committee shall report to the Council of the Organization and tender advice to the Director-General, and relevant international organizations as appropriate, on any matter considered by the Committee, it being understood that copies of its reports, including any conclusions, will be transmitted without delay to interested Governments and international organizations.

9. The Committee shall provide regular reports to the Economic and Social Council of the United Nations, through the Council of the Organization.

10. Any recommendation adopted by the Committee affecting the programme or finance of the Organization or concerning legal or constitutional matters shall be reported to the Council with the comments of the appropriate subsidiary committees of the Council. The reports of the Committee, or relevant extracts therefrom, shall also be placed before the Conference.

11. The Committee shall draw on the advice, as necessary, of the Committee on Commodity Problems and its subsidiary bodies, the Committee on Agriculture and other technical committees of the Council as appropriate, and the Executive Board of the World Food Programme. In particular, it shall take full account of the responsibilities and activities of these and other intergovernmental bodies responsible for aspects of food security in order to avoid overlapping and unnecessary duplication of work.

12. The Committee shall invite relevant international organizations to participate in the work of the Committee and the preparation of meeting documents on matters within their respective mandates in collaboration with the secretariat of the Committee.

13. In order to ensure the effective discharge of its functions, the Committee may request the members to furnish all information required for its work, it being understood that where so requested by the Governments concerned, the information supplied shall be kept on a restricted basis.

14. The Director-General or his representative shall participate in all meetings of the Committee and may be accompanied by such officers of the staff of the Organization as he may designate.

15. The Committee shall elect, from among its members, its Chairman and the other officers. It may adopt and amend its rules of procedure, which shall be consistent with the Constitution and the General Rules of the Organization.

16. The Committee may decide to establish subsidiary or ad hoc bodies where it considers that such action would expedite its own work, without duplicating the work of existing bodies. A decision to this effect may be taken only after the Committee has examined a report by the Director-General on the administrative and financial implications.

17. When establishing subsidiary or ad hoc bodies, the Committee shall define their terms of reference, composition and, as far as possible, the duration of their mandate. Subsidiary bodies may adopt their own rules of procedure, which shall be consistent with those of the Committee.

(Adopted on 17 November 1997)

b. *Cooperation Agreement between FAO and the Regional Centre on Agrarian Reform and Rural Development for the Near East (CARDNE)*

The Conference decided:

—The Conference expressed its satisfaction with the strengthening of the cooperation between the Regional Centre on Agrarian Reform and Rural Development for the Near East (CARDNE) and FAO;



—The Conference noted that the Council at its hundred and twelfth session (Rome, 2-7 June 1997) had endorsed the proposed Agreement. The Conference confirmed the Cooperation Agreement.

- c. *Cooperation Agreement between FAO and the Centre for Marketing Information and Advisory Services for Fishery Products in the Arab Region (INFOSAMAK)*

The Conference decided:

—The Conference expressed its satisfaction with the strengthening of the cooperation between the Centre for Marketing Information and Advisory Services for Fishery Products in the Arab Region (INFOSAMAK) and FAO;

—The Conference noted that the Council at its hundred and thirteenth session (Rome, 4-6 November 1997) had endorsed the proposed Agreement. The Conference confirmed the Cooperation Agreement.

- d. *Cooperation Agreement between FAO and the Intergovernmental Organization for Marketing Information and Technical Advisory Services for Fishery Products in the Asia and Pacific Region (INFOFISH)*

—The Conference expressed its satisfaction with the strengthening of the cooperation between the Intergovernmental Organization for Marketing Information and Technical Advisory Services for Fishery Products in the Asia and Pacific Region (INFOFISH) and FAO;

—The Conference noted that the Council at its hundred and twelfth session (Rome, 2-7 June 1997) had endorsed the proposed Agreement. The Conference confirmed the Cooperation Agreement.

(ii) *Conventions and agreements concluded under article XIV of the FAO Constitution*

- a. *Agreement for the Establishment of the Asia-Pacific Fishery Commission*

Amendments adopted by the Commission at its twenty-fifth session in October 1996 were approved by the FAO Council at its hundred and twelfth session in June 1997. They took effect immediately. The scope of the amendments was to reinforce and update the terms of reference of the Commission.

- b. *Constitution of the European Commission for the Control of Foot-and-Mouth Disease*

At its thirty-second session (April 1997) the Commission adopted further amendments to the Constitution. The amendments were endorsed by the FAO Council at its hundred and thirteenth session (November 1997).

(iii) *Conventions and agreements concluded outside the framework of FAO in respect of which the Director-General exercises depository functions*

On 9 and 10 July 1984, a Conference of Plenipotentiaries of States parties to the International Convention for the Conservation of Atlantic Tunas met in Paris and adopted a Protocol amending the Convention.

Pursuant to its article II, the Paris Protocol was opened for signature at the headquarters of FAO in Rome until 10 September 1984.

In accordance with its article III, the Protocol entered into force on the thirtieth day following the deposit with the Director-General of FAO of the last instrument of approval, ratification or acceptance by all the Contracting Parties to the Convention, i.e. on 19 January 1997.

(b) *Legislative matters*

(i) *Agrarian legislation*

Eritrea, Haiti, Mali, Palestine, Rwanda, Swaziland.

(ii) *Water legislation*

Albania, Bolivia, Estonia, Lao People's Democratic Republic, Niger, South Africa, Sri Lanka, United Republic of Tanzania, Uganda.

(iii) *Animal health and production legislation*

(iv) *Plant protection legislation, including pesticides control*

Belize, Cyprus, Eritrea, Gambia, Ghana, India, Jamaica, Kyrgyzstan, Malaysia, Namibia.

(v) *Plant production and seed legislation*

Kyrgyzstan, Palestine.

(vi) *Food legislation*

Armenia, Romania, Senegal, Turkey, Venezuela.

(vii) *Fisheries legislation*

Burkina Faso, Côte d'Ivoire, Cuba, Dominican Republic.

(viii) *Forestry and wildlife legislation*

Bhutan, Cape Verde, Democratic Republic of the Congo, Madagascar, United Republic of Tanzania.

(ix) *Environment legislation*

United Republic of Tanzania.

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3. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND  
CULTURAL ORGANIZATION

(a) Constitutional and procedural questions

(i) *Amendment to the Constitution*

By its resolution 29 C/84, adopted on 11 November 1997, the General Conference at its 29th session took the following decision concerning article V, paragraph 4 (a), of the Organization's Constitution:

*"The General Conference,*

*Having considered document 29 C/5 1 and taken note of the report of the Legal Committee (29 C/76 and Add. and Corr.),*

1. *Decides to add to the end of the first sentence of subparagraph (a) of paragraph 4 of article V of the Constitution the following phrase:*

*'except for the election that takes place during the 30th session of the General Conference, where one of the elected member States from Electoral Group II and two of the elected member States from Group IV, whose names shall be drawn by the president of the General Conference by lot, shall serve until the close of the 31st session of the Conference';*

2. *Decides further that this amendment shall be expunged from the text of the UNESCO Constitution at the close of the 30th session of the General Conference."*

The amended article V.4 (a) now reads as follows:

*"Members of the Executive Board shall serve from the close of the General Conference which elected them until the close of the second ordinary session of the General Conference following that election. The General Conference shall, at each of its ordinary sessions, elect the number of Members of the Executive Board required to fill vacancies occurring at the end of the session except for the election that takes place during the 30th session of the General Conference, where one of the elected member States from Electoral Group II and two of the elected member States from Group IV, whose names shall be drawn by the President of the General Conference by lot, shall serve until the close of the 31st session of the Conference."*

(ii) *Membership in the Organization*

The United Kingdom of Great Britain and Northern Ireland resumed its membership of UNESCO with effect from 1 July 1997.

## (b) International regulations

### (i) *Entry into force of instruments previously adopted*

Within the period under review, no multilateral conventions or agreements adopted under the auspices of UNESCO entered into force.

### (ii) *Instruments adopted by the General Conference of UNESCO*

- Recommendation concerning the Status of Higher-Education Teaching Personnel, adopted by the General Conference at its 29th session, on 11 November 1997
- Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference at its 29th session, on 11 November 1997
- Declaration on the Responsibilities to the Present Generations towards Future Generations, adopted by the General Conference at its 29th session, on 12 November 1997

### (iii) *Instrument adopted under the joint auspices of the Council of Europe and UNESCO*

- Convention on the Recognition of Qualifications concerning Higher Education in the European Region, adopted in Lisbon on 11 April 1997

In accordance with the terms of article XI.2, this Convention shall enter into force on the first day of the month following the expiration of the period of one month after five States, including at least three States of the Council of Europe and/or the UNESCO Europe region, have expressed their consent to be bound by the Convention. It shall enter into force for each other State on the first day of the month following the expiration of the period of one month after the date of expression of its consent to be bound by the Convention.

### (iv) *Proposal concerning the preparation of new instruments*

The General Conference having examined the question on the feasibility of an international instrument on the establishment of a legal framework relating to cyberspace and of a recommendation on the preservation of a balanced use of languages in cyberspace, recognized the urgent importance of establishing a framework relating to cyberspace at the international level by formulating a body of educational, scientific and cultural principles and guidelines. The General Conference invited the Director-General to prepare a draft recommendation on the provision of universal access to multilingualism in cyberspace to be submitted to the 30th session of the General Conference.

### (c) Human rights

#### *Examination of cases and questions concerning the exercise of human rights coming within UNESCO's fields of competence*

The Committee on Convention and Recommendations met in private session at UNESCO headquarters from 20 to 23 May 1997 and on 30 September 1997, 1 October and 3 October 1997 in order to examine communications which had been transmitted to it in accordance with decision 104 EX/3.3 of the Executive Board.

At its May session, the Committee examined 23 communications, of which 17 were examined with a view to determining their admissibility or otherwise, 2 were examined as regards their substance, and 4 were examined for the first time. Of the communications, one was declared irreceivable and one was struck from the list because it was considered as having been settled. The Committee presented its report to the Executive Board at its 151st session.

At its October session, the Committee examined 25 communications, of which 18 were examined with a view to determining their admissibility or otherwise, 2 were examined as regards their substance and 5 were examined for the first time. Of the communications examined, 3 were struck from the list because they were considered as having been settled. The Committee presented its report to the Executive Board at its 152nd session.

### (d) Copyright activities

In the framework of its Recommendation on the Status of the Artist (1980), UNESCO organized a World Congress at the Organization headquarters (Paris) from 16 to 20 June 1997. More than 600 participants from 100 countries attended the meeting. Artists from all the disciplines (fine arts, performing arts, music, literature, architecture), representatives of artistic NGOs and cultural institutions and foundations and representatives of Member States met together to discuss important issues of the artist's life and profession in a changing society. Three round tables on subjects such as new technologies in artistic creation, private and public funding of the arts and art education for children and young people were organized. The musician Lord Yehudi Menuhin, the Nobel Prize-winning writer Nadine Gordimer, the sculptor Agam, the dancer Mallika Sarabhai, among many other artists and writers, contributed to the debates. The proceedings of the round tables will be published in 1998. In the meantime, the professional artistic organizations (International Federation of Artists, International Federation of Musicians, International Music Council, International Association of Arts, PEN International, International Theatre Institute, International Dance Council) drafted a final Declaration adopted by the participants, which included recommendations in the following fields: funding of the arts, support for artistic creation, artistic education and training, arts and new technologies, rights of authors and performing artists, working conditions, taxation and health of the artists, and promotion of the 1980 Recommendation.

The UNESCO/WIPO World Forum on the Protection of Folklore was held in cooperation with the Government of Thailand in Phuket from 8 to 10 April 1997. More than 200 participants of the forum, experts in folklore from all re-

gions of the world, examined the possibility of the legal protection of folklore at the national and international levels.

The Intergovernmental Committee of the Universal Copyright Convention met for its 11th ordinary session in Paris from 23 to 27 June 1997. Representatives of 51 States and of a number of international non-governmental organizations discussed, *inter alia*, such important issues as the adaptation of the right of reproduction and communication to the public in the digital multimedia environment, the legal status of multimedia works and the harmonization of legal protection, as well as the conditions governing the application of the *droit de suite* (re-sale rights).

The 16th ordinary session of the Intergovernmental Committee of the Rome Convention was held jointly with ILO and WIPO in Paris from 30 June to 2 July 1997. The main point of discussion was the impact of digital technology on the beneficiaries of the Convention (the protection of performers, producers of phonograms and broadcasting organizations): on the employment and working conditions of performers, on the nature and the extent of the protection and on the collective administration of the beneficiaries' rights.

To support the efforts of the States in the introduction and development of the teaching of copyright and neighbouring rights at the university level (initiated by UNESCO at the end of the 1980s), UNESCO published the French version of the first international manual on the subject (more than 900 pages) by Professor D. Lipszyc. Initially published in Spanish, the Manual will partially reduce the great lack of legal literature on the subject in the developing countries. It is also very helpful for self-specialization of teachers of law, also greatly lacking in those countries.

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#### 4. WORLD BANK

##### (a) IBRD, IFC and IDA membership

In 1997, Cambodia joined IFC, Palau joined the Bank, IDA and IFC, and Turkmenistan joined IFC.

##### (b) World Bank Inspection Panel

Requests submitted to the Inspection Panel in 1997:

Request No. 9: Brazil: Itaparica Resettlement and Irrigation Project;

Request No. 10: India: National Thermal Power Corporation Ltd. Power Project.

For further information on these requests and on requests submitted earlier, please refer to the Inspection Panel's publications.<sup>218</sup>

## (c) Multilateral Investment Guarantee Agency (MIGA)

### *Signatories and members*

The Convention Establishing the Multilateral Investment Guarantee Agency was opened for signature to member countries of the World Bank and Switzerland in October 1985. As of December 1997, the Convention had been signed by 158 countries, 139 of which had also completed membership requirements. During 1997, 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., non-commercial) risks of expropriation, currency transfer restriction, breach of contract, and war and civil disturbance. As of 31 December 1997, MIGA had issued 314 contracts of guarantee, totalling US\$ 3.6 billion in maximum contingent liability. Aggregate foreign direct investment facilitated by all MIGA-insured projects was estimated to be more than \$20.4 billion. Investors holding MIGA guarantees were from: Argentina, Belgium, Brazil, Canada, Cayman Islands, France, Germany, Italy, Japan, Luxembourg, Netherlands, Norway, Republic of Korea, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay. Similarly, host countries of MIGA-guaranteed investments included: Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, Bulgaria, Cameroon, Chile, China, Colombia, Costa Rica, Czech Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Georgia, Ghana, Guatemala, Guinea, Guyana, Honduras, Hungary, India, Indonesia, Jamaica, Kazakhstan, Kuwait, Kyrgyzstan, Madagascar, Mali, Morocco, Mozambique, Nepal, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela and Viet Nam.

### *Host country investment agreements between MIGA and its member States*

As directed by article 23(b)(ii) of the Convention, the Agency concludes bilateral legal protection agreements with developing member countries to ensure that MIGA is afforded treatment no less 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 1997, the Agency concluded agreements with Bahrain, Colombia, Dominica, the Gambia, Guatemala, Panama, Qatar, Saint Lucia and Saint Vincent and the Grenadines. As of 31 December 1997, 85 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 1997, the Agency concluded agreements with Bahrain, Colombia, Dominica, the Gambia, Guatemala, Panama, Qatar, Saint Lucia and Saint Vincent and the Grenadines. As of 31 December 1997, 90 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 1997, the Agency concluded agreements with: Colombia, Eritrea, Panama, Qatar and Saint Vincent and the Grenadines. As of 31 December 1997, 90 such agreements were in force.

#### (d) International Centre for Settlement of Investment Disputes

##### *Signatures and ratifications*

During 1997, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention)<sup>219</sup> was ratified by three countries: Bosnia and Herzegovina, Colombia and Latvia. There were two new signatories: Croatia and Yemen. With these new signatures and ratifications, the number of signatory States reached 143 and the number of Contracting States reached 129.

##### *Disputes before the Centre*

During 1997, arbitration proceedings under the ICSID Convention were instituted in eight new cases, *Société d'Investigation de Recherche et d'Exploitation Minière v. Burkina Faso* (case No. ARB/97/1), *Société Kufpec (Congo) Limited v. Republic of Congo* (case No. ARB/97/2), *Compañía de Aguas del Aconquija S.A. and Compagnie Générale des Eaux v. Argentine Republic* (case No. ARB/97/3), *Ceskoslovenska obchodni banka, a.s. v. Slovak Republic* (case No. ARB/97/4), *WRB Enterprises and Grenada Private Power Limited v. Grenada* (case No. ARB/97/5), *Lanco International, Inc. v. Republic of Argentina* (case No. ARB/97/6), *Emilio Agustín Maffezini v. Kingdom of Spain* (case No. ARB/97/7) and *Compagnie Française pour le Développement des Fibres Textiles v. République de Côte d'Ivoire* (case No. ARB/97/8). Two arbitration proceedings were instituted under the ICSID Additional Facility Rules: *Metalclad Corporation v. United Mexican States* (case No. ARB(AF)/97/1) and *Robert Azinian and others v. United Mexican States* (case No. ARB(AF)/97/2). Two proceedings, *American Manufacturing & Trading, Inc. v. Republic of Zaire* (case No. ARB/93/1) and *Cable Television of Nevis, Ltd. and Cable Television of Nevis Holdings, Ltd. v. Federation of St. Kitts and Nevis* (case No. ARB/95/2), were closed following the rendition of awards. Two arbitration proceedings, *Leaf Tobacco A. Michaelides S.A. and Greek-Albanian Leaf Tobacco & Co. S.A. v. Republic of Albania* (case No. ARB/95/1) and *Société Kufpec (Congo) Limited v. Republic of Congo* (case No. ARB/97/2) were settled by the parties before the rendition of an award.

As of 31 December 1997, five other cases were pending before the Centre: *Tradex Hellas S.A. v. Republic of Albania* (case No. ARB/94/2), *Antoine Goetz and others v. Republic of Burundi* (case No. ARB/95/3), *Compañía del Desarrollo*



de Santa Elena S.A. v. *Republic 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).

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## 5. INTERNATIONAL MONETARY FUND

As of 31 December 1997, there were seven members that were in protracted arrears (i.e., financial obligations that are overdue by six months or more) to the Fund.

Article XXVI, section 2(a), of the Fund's Articles of Agreement provides that if "a member fails to fulfil any of its obligations under this Agreement, the Fund may declare the member ineligible to use the general resources of the Fund." Of the seven members with protracted arrears to the Fund, declarations under article XXVI, section 2(a), remained in effect in 1997 with respect to the Democratic Republic of the Congo, Liberia, Somalia and the Sudan.

### SUSPENSION OF VOTING RIGHTS AND COMPULSORY WITHDRAWAL

#### (i) *Democratic Republic of the Congo*

The Democratic Republic of the Congo's voting and related rights were suspended effective 2 June 1994. On 28 February 1997, on the occasion of reviewing the decision to suspend the Democratic Republic of the Congo's voting rights, the Executive Board decided to give further consideration to the initiation of the procedure on compulsory withdrawal within six months unless the Democratic Republic of the Congo had resumed cooperation with the Fund in the areas of policy implementation and payments performance. No such procedure was initiated in 1997.

#### (ii) *Sudan*

The Sudan's voting and related rights were suspended, effective 9 August 1993, in accordance with article XXVI, section 2(b), of the Fund's Articles of Agreement. Subsequently, on 8 April 1994, the Managing Director issued a complaint under rule K-1, thereby initiating the procedure for compulsory withdrawal of the Sudan from the Fund. During 1996, the complaint was considered by the Executive Board, which decided to review the complaint again in 1997. On 12 February 1997, the Executive Board decided that there was a basis to recommend that the Board of Governors should require the Sudan to withdraw from membership. However, given the recent payments made by the Sudan, the assurances provided by the Sudanese authorities on payments to the Fund and policy reinforcement, the Executive Board decided that it would not make such a recommendation provided the Sudan made monthly payments to the Fund according to a specific schedule and adopted and satisfactorily implemented a programme of economic and financial adjustment of a quality that warranted monthly monitoring by Fund staff. A programme of economic and financial adjustment was presented to the Executive Board, which decided on 27 March 1997 that the programme was of a quality that warranted monthly monitoring by the staff. The

decision and the complaint were reviewed on 29 August 1997. The Executive Board noted that the Sudan had made payments on schedule and had followed most elements of the monthly monitored programme. The Executive Board encouraged the Sudan to make continued payments to the Fund and to implement policies that could warrant a staff-monitored programme, and decided to review the case of the Sudan in six months or on the occasion of the 1997 article IV consultation, whichever was earlier.

#### ISSUES PERTAINING TO REPRESENTATION AT THE FUND

##### (i) *Afghanistan*

Afghanistan has overdue financial obligations to the Fund. The matter was last discussed by the Executive Board on 13 March 1996. At the annual meetings of 1996, Afghanistan was represented by a delegation whose members were appointed before the overthrow of the Government of President Rabbani. Due to the unsettled political situation in Afghanistan, there were no further Board meetings on matters relating to Afghanistan in 1997. Afghanistan had no Governor or Alternate Governor in 1997. Afghanistan was not represented at the annual meetings of 1997.

##### (ii) *Democratic Republic of the Congo*

Paragraph 3(a) of schedule L of the Articles of Agreement provides that the "Governor and the Alternate Governor appointed by the member shall cease to hold office" in the case of suspension of voting rights of a member under article XXVI, section 2(b). As mentioned above, in view of the suspension of the voting and related rights of the Democratic Republic of the Congo with effect from 2 June 1994, the Governor and Alternate Governor for the country ceased to hold office on that date. The Democratic Republic of the Congo, accordingly, was not represented at the annual meetings of 1997.

##### (iii) *Somalia*

Somalia has overdue financial obligations to the Fund. In October 1992, the Executive Board found that, given the domestic situation in Somalia, there was no effective government with which the Fund could carry on its activities. Accordingly, the review of Somalia's overdue financial obligations was postponed to a date to be determined by the Managing Director when it would be possible to evaluate Somalia's economic and financial situation and the stance of its economic policies. No such review took place in 1997. Somalia had no Governor or Alternate Governor in 1997. Somalia was not represented at the annual meetings of 1997.

##### (iv) *Sudan*

As with Democratic Republic of the Congo, with the suspension of the Sudan's voting and related rights on 9 August 1993, the Governor and Alternate Governor appointed by the Sudan ceased to hold office on that date. The Sudan was not represented at the annual meetings in 1997. Neither was the Sudan repre-

sented at the Executive Board in 1997, except on occasions where the Executive Board was considering a matter particularly affecting the Sudan. 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.

#### ENHANCED STRUCTURAL ADJUSTMENT FACILITY (ESAF) TRUST—AMENDMENT

The ESAF Trust is designed to render financial assistance to low-income developing members. The Instrument to Establish the ESAF Trust was amended on 9 February 1997 to enable the Trustee to approve additional three-year commitments after the expiration of the original three-year commitment of an eligible member.

#### ESTABLISHMENT OF A TRUST FOR SPECIAL ESAF OPERATIONS FOR HEAVILY INDEBTED POOR COUNTRIES (HIPC) AND INTERIM ESAF SUBSIDY OPERATIONS

In September 1996, the Interim Committee endorsed a joint report by the Managing Director of the International Monetary Fund and the President of the World Bank on a Program of Action to Resolve the Debt Problems of the Heavily Indebted Poor Countries (the "Initiative"). On 4 February 1997, the Executive Board adopted the Instrument to Establish a Trust for Special ESAF Operations for the Heavily Indebted Poor Countries and Interim ESAF Subsidy Operations. The purposes of the trust are to assist eligible members that qualify under the HIPC Initiative and to subsidize the interest rate on interim ESAF operations to eligible members. In order to be eligible for HIPC assistance from the trust, a member must meet the following requirements: (a) be ESAF-eligible; (b) be pursuing a programme of adjustment and reform in the two-year period beginning 1 October 1996, supported by the Fund through ESAF or Extended Arrangements or, on a case-by-case basis as determined by the Trustee, other Fund-supported programmes; and (c) have received or be eligible to receive assistance to the full extent available under traditional debt relief mechanisms in support of its adjustment and reform programme. The Trustee shall determine whether an eligible member qualifies for assistance under the Initiative in accordance with criteria including: (a) the debt sustainability of the member's external debt situation, (b) the establishment of a track record of strong policy performance under Fund-supported programmes, covering macroeconomic policies and structural and social policy reforms, and (c) the agreement of all other creditors of the member to take action under the Initiative.

#### NEW ARRANGEMENTS TO BORROW—ESTABLISHMENT

On 27 January 1997, the Executive Board adopted, under article VII, section 1, of the Articles of Agreement, the terms and conditions of New Arrangements to Borrow.<sup>220</sup> Pursuant to these arrangements, 25 member countries or financial institutions of members with the financial capacity to support the international monetary system have agreed to make available to the Fund resources in the form of loans up to specified amounts when supplementary resources are needed to forestall or cope with an impairment of the international monetary system or to deal with an exceptional situation that poses a threat to the stability of that system. With respect to the relationship of the New Arrangements to Borrow with the

General Arrangements to Borrow, the New Arrangements to Borrow shall generally be the facility of first and principal recourse.

#### PRESS INFORMATION NOTICES—RELEASE

On 24 April 1997, the Executive Board adopted a decision pursuant to which, shortly following the completion of an article IV consultation for a member, the Fund may release, with the consent of the member concerned, a press information notice reporting on the results of the consultation. The press information notice will be brief and will consist of two sections: (a) a background section with factual information on the economy of a member, including a table of economic indicators, and (b) the Fund's assessment of the member's prospects and policies, excluding, however, market-sensitive information, such as Fund views on exchange rate and interest rate matters.

#### SUPPLEMENTAL RESERVE FACILITY—ESTABLISHMENT

On 17 December 1997, the Executive Board adopted a decision establishing the Supplemental Reserve Facility. The Supplemental Reserve Facility is intended to provide financial assistance to members experiencing exceptional balance-of-payments difficulties due to a large short-term financing need resulting from a sudden and disruptive loss of market confidence reflected in pressure on the capital account and the member's reserves. For the use of this facility by a member, there should be a reasonable expectation that the implementation of strong adjustment policies and adequate financing will result, within a short period of time, in an early correction of such difficulties. In order to minimize moral hazard, a member using resources under the Supplemental Reserve Facility will be encouraged to seek to maintain the participation of creditors, both official and private, until the pressure on the balance of payments ceases. In this respect, all options should be considered to ensure appropriate burden-sharing.

Financing under the Supplemental Reserve Facility is available under a standby or extended arrangement, in addition to resources in the credit tranches or under the extended Fund facility. Access under the Supplemental Reserve Facility is not subject to the applicable annual and cumulative access limits. Financing beyond either limit will be provided exclusively under this facility, unless the member's medium-term financing needs require access in the credit tranches or under the extended Fund facility beyond the annual or cumulative access limits. Financing under the Supplemental Reserve Facility will be determined on the basis of the financing needs of the member, its capacity to repay, including in particular the strength of its programme, its outstanding use of Fund credit and its record in using Fund resources in the past and in cooperating with the Fund with respect to surveillance, as well as the Fund's liquidity. Financing under the Supplemental Reserve Facility is committed for a period of up to one year and will generally be available in two or more purchases with the first purchase being available at the time of approval of financing under the facility. The member's obligation to repurchase under this facility is within two to two and half years from the date of each purchase in two equal semi-annual instalments, the first instalment becoming due two years and the second instalment two and a half years from the date of each purchase. However, the member is expected to repurchase one year before the due date unless the Fund decides, upon request by the member, to extend each such repurchase expectation by up to one year. During the first

year following approval of financing under the facility, the rate of charge levied on purchases under the Supplemental Reserve Facility is 300 basis points per annum above the regular rate of charge applied on other use of the Fund's resources, as adjusted for burden-sharing. This rate shall be increased by 50 basis points at the end of the first year and every six months thereafter until it reaches 500 basis points.

#### INCREASE IN QUOTAS OF MEMBERS

Article III, section 2(a), of the Articles of Agreement provides that the Board of Governors shall conduct a general review of quotas at intervals of not more than five years and, if it deems appropriate, propose an adjustment of the quotas of the members. The Tenth General Review of Quotas was completed in early 1995 without recommending an increase in quotas to the Board of Governors. The report of the Executive Board, which was endorsed by the Board of Governors, had concluded that the overall size of the Fund at that time was broadly sufficient to enable the Fund to promote its purposes effectively and to fulfil its central role in the international monetary system.

On 22 December 1997, the Executive Board approved the report of the Executive Board to the Board of Governors entitled "Increases in quotas of Fund members—eleventh General Review" and requested the Board of Governors to vote upon the proposed resolution entitled "Increases in quotas of Fund members—eleventh General Review: resolution of the Board of Governors".

In assessing the Fund's need for resources over the medium term, the Executive Board stressed that the Fund must be adequately endowed with financial resources to enable it to act effectively when dealing with members' balance-of-payments difficulties. The Executive Board also stressed that the Fund must ensure that its resources are fully safeguarded, including by the adoption and implementation of appropriate policies by members, supported by use of the Fund's general resources, and that its resources are provided on a temporary basis, thereby ensuring that its resources revolve. Finally, the Executive Board stressed that the Fund must hold a level of usable assets that are sufficient to protect the liquidity and immediate usability of members' claims on the Fund so as to maintain their confidence and support of the institution.

In its consideration of the size of the increase in quotas, the Executive Board has taken into account a range of factors, including the growth of world trade and payments since 1990 (date of the last quotas increase); the scale of potential payments imbalances, including imbalances that may stem from sharp changes in capital flows; the prospective demand for Fund resources, including the need to support members' growth-oriented adjustment programmes; and the rapid globalization and the associated liberalization of trade and payments, including on capital account, that has characterized the development of the world economy since 1990. The Executive Board also considered the Fund's liquidity position and the adequacy of the Fund's borrowing arrangements, in particular the General Arrangements to Borrow and the prospective coming into effect of the New Arrangements to Borrow. In that regard, the Executive Board reiterated its view that the borrowing arrangements are not a substitute for larger quotas and that the Fund should continue to rely on its quota resources as its principal form of financing and should resort to borrowing only in exceptional circumstances.

In the light of the above considerations and taking into account the agreement reached by the Executive Board at the annual meetings in Hong Kong SAR,

which was endorsed by the Interim Committee at its meeting on 21 September 1997 in Hong Kong SAR, the Executive Board proposed that the total of Fund quotas should be increased by 45 per cent, from approximately SDR 146 billion to approximately SDR 212 billion.

The distribution of the overall quota increase was guided by the views of the Interim Committee in its communiqués of April and September 1997. On 21 September 1997, the Interim Committee had agreed that, of the overall increase:

- 75 per cent would be distributed in proportion to present quotas;
- 15 per cent would be distributed in proportion to members' shares in calculated quotas (based on 1994 data), so as to better reflect the relative economic position of members;
- 10 per cent would be distributed among those members whose present quotas are out of line with their positions in the world economy (as measured by the excess of their share in calculated quotas over their share in actual quotas), of which 1 per cent of the overall increase would be distributed among five members whose current quotas are far out of line with their relative economic positions and which are in a position to contribute to the Fund's liquidity over the medium term.

The Executive Board also proposed adjustments in the quotas of France, Germany, Italy, and the United Kingdom in a manner that would maintain unchanged the increases in quotas for all other members. The Executive Board furthermore noted that the United Kingdom and France had agreed to maintain the equal distribution of quotas between themselves under the Eleventh General Review as first agreed under the Ninth General Review.

#### SPECIAL ONE-TIME ALLOCATION OF SDRs—REPORT TO THE BOARD OF GOVERNORS ON PROPOSED FOURTH AMENDMENT TO THE ARTICLES OF AGREEMENT

On 19 September 1997, pursuant to a request of the Interim Committee that an amendment of the Articles of Agreement should be proposed providing for a special one-time allocation of SDRs, the Executive Board decided to adopt the report of the Executive Board to the Board of Governors on the proposed fourth amendment of the Articles of Agreement of the International Monetary Fund. The Executive Board also proposed the introduction in the Articles of Agreement of the modifications included in the proposed fourth amendment attached to the resolution in part IV of the report. Finally, the Executive Board recommended the adoption by the Board of Governors of the resolution in part IV of the report.

Pursuant to the proposed fourth amendment of the Articles of Association, the text of article XV, section 1, would be amended to provide for the allocation by the Fund of special drawing rights to members that are participants in the Special Drawing Rights Department in accordance with the provisions of a new schedule M that would be added to the articles.

The Board of Governors adopted resolution No. 52-4 entitled "Special one-time allocation of SDRs, proposed fourth amendment of the Articles of Agreement effective September 23, 1997". The proposed fourth amendment of the Articles of Agreement will become effective when three fifths of the members having 85 per cent of the total voting power have accepted the amendment. The Fund shall certify the fact by a formal communication addressed to all members.

Following the signature of a Cooperation Agreement with the World Trade Organization on 9 December 1996, the Board of Governors adopted on 8 January 1997 a proposed amendment to the Fund's By-Laws granting WTO observer status at the annual meetings of the Board of Governors.

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## 6. INTERNATIONAL CIVIL AVIATION ORGANIZATION

### (a) Work Programme of the Legal Committee

The General Work Programme of the Legal Committee, as decided by the Council on 1 December 1997, 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 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;
- (v) Acts or offences of concern to the international aviation community not covered by existing air law instruments;
- (vi) International interests in mobile equipment (aircraft equipment).

### (b) Legal meetings

Regarding item (i), the Panel of Legal and Technical Experts on the Establishment of a Legal Framework decided at its first meeting (25-30 November 1996) to set up two working groups, which reported to the Panel at its second meeting (6-10 October 1997). At that meeting, the Panel adopted a Draft Charter on the Rights and Obligations of States relating to GNSS Services and a series of recommendations.

Regarding item (ii), the 30th session of the Legal Committee approved the text of a Draft Convention for the Unification of Certain Rules for International Carriage by Air. Taking into account that the draft instrument approved by the Legal Committee had not entirely resolved a number of elements, the Council decided on 26 November to establish a Special Group on the Modernization and Consolidation of the Warsaw System to further advance the work.

Regarding item (v), the Council decided on 6 June that a secretariat study group be established for the subject.

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## 7. UNIVERSAL POSTAL UNION

The study of certain legal issues which was begun by the Council of Administration in 1995 was continued in 1997. One undertaking, the continuation of the revision of the Acts, led in 1997 to a draft for a new Universal Postal Convention which would also cover postal parcel services, and two sets of draft regulations, one for letter post and the other for postal parcels. If the next UPU Congress, to be held in 1999, accepts the proposal by the Council of Administration, the new Convention will replace both the current Universal Postal Convention and the postal parcels agreement.

The Council of Administration has also carried out a revision of the Acts in respect of postal financial services in collaboration with the Postal Operations Council. This work led to a draft agreement on postal financial services with regulations. The agreement is designed to replace the three existing agreements, namely the money orders agreement, the postal cheques agreement and the cash-on-delivery agreement.

Within the framework of the revision of the Acts, some provisions have been moved from the Convention and the financial services agreement to their regulations. The latter can be changed quickly by the Postal Operations Council without awaiting the decision of the supreme body of UPU, the Congress, which meets only every five years. This transfer of legislative power primarily concerns operational aspects.

The Acts of UPU were made accessible on the Internet ([www.upu.int](http://www.upu.int)) as of the end of 1997.

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## 8. INTERNATIONAL MARITIME ORGANIZATION<sup>221</sup>

### (a) Provision of financial security (previously referred to as "compulsory insurance")

At its seventy-fourth session, in October 1996, the Legal Committee had established a Correspondence Group with the mandate to consider suitable measures for introducing rules on evidence of financial security for vessels. At its seventy-fifth (April 1997) and seventy-sixth (October 1997) sessions, the Committee considered the reports of the Correspondence Group on financial responsibility. The issue of the need for international regulations was revisited and, although several delegations were firmly of the opinion that no compelling need had been demonstrated for international rules on financial security, most delegations felt that at the current preliminary stage it was necessary for the Correspondence Group to continue its work. Members were invited to present evidence as to compelling need to the Committee.

The Committee considered in particular two priorities proposed in the report, namely, the development of rules on evidence of financial responsibility for passenger claims and rules on claims for which leading P&I Clubs offered insurance. It was agreed that the question of the provision of financial security in respect of passenger claims should be looked at as a matter of priority and that this might be addressed within the framework of a revision of the Athens Convention



relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 1990 aimed at ensuring wider acceptance of the Convention. Whether such claims should be linked to the Athens Convention or not was left open for the time being.

The Committee also considered a number of fundamental issues regarding the elaboration and implementation of general provisions on financial security, including the form of the revision, the basis of liability, the limits of compensation, accident insurance, terms of cover and control. The Committee decided that, with respect to crew claims, ILO should be consulted. However, the Committee noted that opinions were divided on a number of fundamental questions and member States were encouraged to work together in order to enable the Committee to take decisions on a number of policy issues at its next session. The item was included as a priority item in the work programme for 1998.

### *(b) Compensation for pollution from ships' bunkers*

The Legal Committee at its seventy-fifth session (April 1997) and seventy-sixth session (October 1997) continued its consideration concerning an international regime for liability and compensation for damage caused by oil from ships' bunkers.

Alternative texts of articles of a draft free-standing instrument or a draft protocol modelled on the 1973 Intervention Protocol were presented. While there were divided opinions on the question of "compelling need" for such a regime, the Committee discussed a number of fundamental issues in connection with the possible adoption of such a regime, namely: compulsory insurance; the scope of application (damage); channelling of liability; administrative burdens associated with compulsory insurance; and the basis of liability (strict).

The Committee agreed that further work could be done by the sponsoring delegations and decided that the item should be considered at its next session, time permitting. This item was included in the work programme for 1998.

### *(c) Draft convention on wreck removal*

The Legal Committee at its seventy-fifth session in April 1997 and its seventy-sixth session in October 1997 considered the report of the Correspondence Group on Wreck Removal. A revised draft convention was discussed without prejudice to the question of need. The Committee also considered a submission by the Comité Maritime International (CMI) which contained a report of the discussions on the subject of the draft wreck removal convention which took place at the CMI Centenary Conference held in Antwerp, Belgium, in June 1997 and also related to decommissioned structures and wrecks and to removal of structures which had become redundant or which had been the subject of major casualties.

The Committee exchanged views on issues raised by the Correspondence Group report, including the geographic scope of application, types of risks covered, types of wreck/ships covered, limitation of liability, reporting requirements and additional issues relating to salvors and to requiring contributions from the cargo.

There was significant support for optional application to territorial waters by opting out, while mandatory application to both the territorial waters and beyond

had little support. Some delegations still expressed doubts about the actual need for the convention. Most delegations favoured mandatory application beyond the territorial waters and optional application to the territorial waters by opting in. The Committee decided to refer to the Correspondence Group the study of possible treaty law problems related to optional application to territorial waters.

The Legal Committee concluded that the Correspondence Group should continue its work, taking into account the comments at the current session, and report to the Committee at its seventy-seventh session. The Committee agreed to keep the item on the agenda for 1998.

#### (d) 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 1996 to June 1997.

#### (e) Carriage by sea of radioactive material

As requested by the Committee at its seventy-fifth session, the representative of IAEA provided information on the outcome of the Diplomatic Conference Convened to Adopt a Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage and to Adopt a Convention on Supplementary Funding (Vienna, 8-12 September 1997) ("the Liability Conference"), and on the outcome of the Diplomatic Conference Convened to Adopt a Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (Vienna, 1-5 September 1997) ("the Safety Conference"). He noted that the multilateral instruments adopted at the Diplomatic Conferences were now before Governments for their consideration. The representative of IAEA further reported on a resolution on the safety of transport of radioactive materials adopted in October 1997 at the forty-first regular session of the General Conference of IAEA.

The Committee took note of the information provided by the representative of IAEA. A number of delegations indicated the need to further analyse the outcome of the Conference in order to assess the implications for the maritime transport of nuclear substances. Member States were encouraged to consult with their own delegations that had attended the IAEA Conference. It was suggested that States which had not participated in the Conference might directly approach IAEA to obtain additional information.

#### (f) Proposed multilateral convention to combat illegal migration by sea

The Committee considered a proposal for a multilateral convention to combat the trafficking of illegal migration by sea. However, a question was raised as to whether IMO was the appropriate body to deal with the subject since the matter was also the subject of consideration in the United Nations and other international organizations.

In that connection it was noted that some issues contained in the proposal had been dealt with by existing international conventions and were appropriate for other United Nations agencies such as UNHCR and the International Organi-

zation for Migration. Attention was drawn to the fact that smuggling of illegal migrants had been considered by the United Nations Commission on Crime Prevention and Criminal Justice for a number of years, where further work was progressing. It was further suggested that some of the issues raised by the proposal went beyond the limits of UNCLOS.

The Committee concluded that, although there had been significant support for the proposal, most delegations who spoke had expressed their doubts about the inclusion of the item in the Committee's work programme at the current stage.

- (g) Consideration of a recommendation to convene a diplomatic conference to consider draft articles for a new convention on arrest of ships

The Committee endorsed the recommendation adopted by the Joint IMO/UNCTAD Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects at its ninth session to convene a United Nations/IMO diplomatic conference to consider the set of draft articles for a new convention on arrest of ships approved by the Group.

#### (h) Amendments to treaties

- (1) *1997 amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974) (chapters II-1 and V)*

The Maritime Safety Committee at its sixty-eighth session (June 1997) adopted by resolution MSC.65(68) amendments to the following chapters of the 1974 SOLAS Convention:

Chapter II-1: Construction—subdivision and stability, machinery and electrical installations;

Chapter V: Safety of navigation.

These amendments to the 1974 SOLAS Convention concern specific requirements for passenger ships, other than ro-ro passenger ships, carrying 400 persons or more and vessel traffic services.

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 1999 unless, prior to 1 January 1999, more than one third of the 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.

- (2) *1997 amendments to the International Convention on Safety of Life at Sea, 1974, as amended (SOLAS 1974) (new chapter XII and amendments to resolution A.744(18))*

A Conference of Contracting Governments to the International Convention on Safety of Life at Sea, 1974, as amended (SOLAS 1974), adopted on 27 November 1997 amendments to the Convention (new chapter XII and amendments to resolution A.744(18)).

The new SOLAS chapter XII regulations are aimed at improving the safety of bulk carriers, and include new survivability and structural requirements for dry bulk carriers. The conference also adopted amendments to the IMO Guidelines on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers (first adopted at the eighteenth IMO Assembly in 1993, and made mandatory by 1994 amendments to the SOLAS Convention).

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 1999 unless, prior to 1 January 1999, more than one third of the 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.

(3) *1997 amendments to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) (IBC Code)*

The Marine Environment Protection Committee at its thirty-ninth session (March 1997) adopted by resolution MEPC.73(39) amendments to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code). The amendments were adopted to clarify vague expressions in the Code.

In accordance with the tacit amendment procedure provided for in article 16(2)(f)(iii) and (g)(ii) of the 1973 MARPOL Convention, the amendments shall enter into force on 10 July 1998 provided the amendments are deemed to have been accepted on 10 January 1998.

(4) *1997 amendments to annex I of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78)*

The Marine Environment Protection Committee at its fortieth session (September 1997) adopted by resolution MEPC.75(40) amendments to annex I of MARPOL 73/78 as follows:

1. Regulation 10, designation of the North-West European waters as a special area;
2. New regulation 25A, Intact stability criteria for double-hull oil tankers.

In accordance with the tacit acceptance procedure provided for in article 16(2)(f)(iii) and (g)(ii) of the 1973 MARPOL Convention these amendments shall enter into force on 1 February 1999 provided the amendments are deemed to have been accepted on 1 August 1998.

- (5) *1997 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and amendments to the Seafarers' Training, Certification and Watchkeeping (STCW) Code*

The amendments were adopted by the Maritime Safety Committee on 4 June 1997 by resolutions MSC.66(68) and 67(68). The amendments add new regulations V/2 and V/3 dealing with minimum mandatory requirements for personnel serving on seagoing passenger ships and ro-ro passenger ships.

In accordance with the tacit amendment procedure provided for in article XII(1)(a)(ix) of the Convention, the amendments shall enter into force on 1 January 1999, provided the amendments are deemed to have been accepted on 1 July 1998.

## (i) Entry into Force of Instruments and Amendments

### (1) Instruments

During 1997, no IMO instruments entered into force.

### (2) Amendments

- a. *1989 amendments to the Convention on the International Mobile Satellite Organization (Inmarsat), as amended*

The Assembly of Inmarsat had adopted amendments to the Convention on 19 January 1989 at its sixth (extraordinary) session in conformity with article 34 of the Convention. The amendments concern mobile satellite systems and aeronautical and land mobile communications and communication on waters not part of the marine environment.

The conditions for entry into force were met with the deposit of an instrument by China on 26 February 1997. The 1989 amendments entered into force on 26 June 1997.

- b. *1989 amendments to the Operating Agreement on the International Mobile Satellite Organization (Inmarsat), as amended*

On 19 January 1989, the Assembly of Inmarsat had confirmed the adoption of amendments to the Agreement, which were approved by the Council of Inmarsat at its thirtieth session in conformity with article XVIII of the Operating Agreement.

The conditions for entry into force were met with the deposit of an instrument by China on 26 February 1997. The 1989 amendments entered into force on 26 June 1997.

- c. *1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978*

These amendments, together with the Seafarers' Training, Certification and Watchkeeping (STCW) Code, were adopted by the Conference of 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 entered into force on 1 February 1997.

*d. 1995 amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974) (chapter V/8; Ships' Routeing)*

The amendments were adopted by the Maritime Safety Committee at its sixty-fifth session (May 1995) by resolution MSC.46(65). Chapter V/8 deals with safety of navigation and the purpose of the amendments is to enable ships' routing systems to be made mandatory. Consequential amendments to the General Provisions on Ships' Routeing were also adopted. The conditions for entry into force were met on 1 July 1996, and the amendments entered into force on 1 January 1997.

*e. 1995 amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974) (chapters II-1, II-2, III, IV and V; ro-ro passenger ships)*

The amendments were adopted by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974) on 29 November 1995.

The most important of the changes concerned the stability of ro-ro passenger ships. The Conference agreed to significantly upgrade the damage stability requirement to be applied to all existing ro-ro passenger ships.

The Conference further adopted a resolution permitting regional arrangements to be made on special safety requirements for ro-ro passenger ships.

The conditions for entry into force were met on 1 January 1997, and the amendments entered into force under the Convention's tacit acceptance procedure on 1 July 1997.

*f. 1995 amendments to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) (amendments to annex V)*

The Marine Environment Protection Committee at its thirty-seventh session (September 1995) adopted by resolution MEPC.65(37) amendments to annex V of MARPOL 73/78.

These amendments, inter alia, add to annex V a new regulation 9 entitled "Placards, waste management plans and garbage record keeping", providing a basis for the enforcement of the requirements of annex V. The amendments were deemed to be accepted on 1 January 1997 and entered into force on 1 July 1997. The requirements apply to existing ships from 1 July 1998.

- g. *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 conditions for entry into force were met on 1 February 1997 and the amendments entered into force on 1 May 1997.

- h. *1996 amendments to the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973 (INTERVENTION PROT 1973)*

The Marine Environment Protection Committee at its thirty-eighth session (July 1996) adopted by resolution MEPC.72(38), in accordance with article III of the Protocol, an amended list of substances to be annexed to the Protocol. The amended list was deemed to have been accepted on 19 September 1997, and entered into force on 19 December 1997.

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## 9. WORLD INTELLECTUAL PROPERTY ORGANIZATION

### (a) Introduction

1. The year 1997 was marked by a vigorous 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 protection, through international registration systems (registration activities).

### (b) Development cooperation activities

2. The main forms in which WIPO provided assistance to developing countries in the fields of industrial property and copyright and neighbouring 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.

3. A special feature of WIPO activities for developing countries continued to be the holding of sessions of the "WIPO Academy". During the first six months of 1997, two two-week sessions were held for middle- and senior-level government officials coming from 26 developing 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 en-

able the participants in the Academy, on their return to their countries, to better formulate appropriate policies for their Governments.

4. As concerns the provision of legal and technical advice to developing countries, about 200 advisory missions were undertaken to several 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 said 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 gave on-the-job training to staff of national administrations on specialized industrial property areas such as patent and trademark examination and classification, and assisted in the installation of computer equipment and software.

5. 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 Common Market of the South (Mercosur).

### (c) Norm-setting activities

6. In the norm-setting area, there was progress in the work of the Committee of Experts for the planned Patent Law Treaty and in respect of a more effective protection of well-known marks, and the commencement of new work on, *inter alia*, recordal of trademark licences and on questions concerning trademarks and Internet domain names. Finally, the period witnessed decisions on future work relating to the development of the Hague Agreement concerning the International Deposit of Industrial Designs and the draft Treaty on the Settlement of Intellectual Property Disputes between States.

7. Also, norm-setting activities in the field of copyright and neighbouring rights were marked by three major meetings organized by WIPO, in April and May 1997, respectively in Phuket, Thailand, Manila and Seville, Spain.

8. The UNESCO-WIPO World Forum on the Protection of Folklore, held in Phuket, examined the preservation and conservation of folklore in the various regions of the world; legal means of protection of expressions of folklore in national legislation; economic exploitation of expressions of folklore; and international protection of expressions of folklore.

9. The WIPO World Symposium on Broadcasting, New Communication Technologies and Intellectual Property, held in Manila, examined the issue of broadcasters as owners of neighbouring rights; the legal status of broadcast programmes at the borderline of copyright and neighbouring rights; broadcasters as "users"; convergence of communication technologies; terrestrial broadcasting,



satellite broadcasting and communication to the public by cable; and digital transmissions in the Internet and similar networks.

10. The WIPO International Forum on the Exercise and Management of Copyright and Neighbouring Rights in the Face of the Challenges of Digital Technology, held in Seville, offered an opportunity for the representatives of different groups interested in the protection, exercise and management of copyright and neighbouring rights to come together, identify their common interests, exchange information and outline the areas where cooperation and joint action were needed.

11. In the patent area, the Committee of Experts on the Patent Law Treaty (PLT) held a session in June 1997. The Committee considered draft provisions for the proposed PLT and its Regulations. Draft provisions were accordingly prepared by the International Bureau for the review of a further session of the Committee in June 1997. A (fifth) session of the Committee was held in December 1997. Proposals for decisions on the date and agenda of the diplomatic conference for the adoption of the Patent Law Treaty and on the convening of a preparatory meeting with procedural aspects of the diplomatic conference would be submitted to the General Assembly of WIPO after the next session of the Committee of Experts, on the basis of the results of that session and taking into account the possible need for another session of the Committee of Experts.

12. As regards trademark licences, draft articles aimed at the simplification and harmonization of procedures relating to the recordal of licences for the use of marks and a model international request form for the recordal of licences were examined by the Committee of Experts on Trademark Licences, which met for the first time in February 1997. The draft articles had been drafted in the same treaty language as the Trademark Law Treaty (TLT), and it is proposed that they become the substantive part of a Protocol to the TLT.

13. As regards international intellectual property issues arising from the new global information infrastructure, including the Internet, and more specifically trademarks and Internet domain names, a meeting of consultants was organized in February 1997 to review a full range of issues on the matter, and a consultative meeting was convened in May 1997 to examine them further. A second consultative meeting was convened in September 1997. Also, consultants from space agencies met at WIPO in March 1997 to discuss the possibility and desirability of adopting special rules or recommending principles which could be used by all interested States for the protection of inventions made or used in outer space. Finally, in June 1997, a WIPO consultative meeting reviewed the need for, and feasibility of, the establishment of an international centralized system for the recording of assignments of patent applications and of patents.

14. Special brochures were issued containing the text of the newly adopted: (i) WIPO Copyright Treaty (WCT) (1996), with the agreed statements of the Diplomatic Conference that adopted the Treaty and the provisions of the Berne Convention (1971) referred to in the Treaty; and (ii) WIPO Performances and Phonograms Treaty (WPPT) (1996), with the agreed statements of the Diplomatic Conference that adopted the Treaty and the provisions of the Berne Convention (1971) and of the Rome Convention (1961) referred to in the Treaty (WIPO publications Nos. 226 and 227, respectively).

(d) International registration activities

15. As far as the Patent Cooperation Treaty (PCT) is concerned, the increase in the number of international applications filed under the PCT continued in 1997. In 1997, a record number of 54,422 international applications was filed, representing an increase of 12.6 per cent over the figure for 1996 and the equivalent of some 3 million national applications.

16. The weekly publication of the *PCT Gazette*, in separate English and French editions, continued. In January 1997, a special issue of the *PCT Gazette* was published, containing consolidated general information relating to contracting States, national and regional offices and international authorities. 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 national phase and the procedure before the designated (or elected) offices, was updated in 1997 to include the many changes that had occurred during the period under review in respect of the PCT.

17. In February 1997, the Meeting of International Authorities under the PCT (PCT/MIA) held its sixth session in Canberra and discussed, among other things, possible modifications of the PCT Search Guidelines; proposed modifications of the PCT Preliminary Examination Guidelines; establishment of a uniform standard for the presentation of nucleotide and/or amino acid sequence listings in international applications; and certain aspects of international preliminary examination and impact of electronic transmission of documents (including international applications and international search reports) on the PCT procedure. In April and June 1997, an ad hoc PCT Advisory Group on proposed amendments to the PCT Regulations met to give advice on possible amendments to the said regulations to be considered by the PCT Assembly in September 1997.

18. As far as the Madrid system is concerned, the total number of international trademark registrations recorded in the International Register during 1997 was 19,070 and the combined total of international trademark registrations and renewals was 23,944, which represented an increase of 4 per cent over the corresponding figure for 1996. During the first six months of 1997, as an average of 11.40 countries were designated by registration, the 9,553 registrations were equivalent to some 109,000 national registrations.

19. Operations under the Madrid Protocol started on 1 April 1996. In connection with the entry into force of the Madrid Protocol, WIPO continued a considerable programme of awareness promotion, which included seminars and training for its potential users as well as for national administrations in different countries. WIPO officials gave presentations on the Madrid system at 11 seminars and training courses in seven countries during the first six months of 1997. Furthermore, WIPO organized four seminars entirely devoted to the subject of the Madrid system in January and June 1997.

20. In June 1997, an informal meeting was organized to examine proposals to adjust the Common Regulations under the Madrid Agreement and Protocol to the combined use of the Madrid system and the Community Trade Mark system. The said proposals were submitted to the Governing Bodies at their September/October 1997 session.

21. As far as the Hague system is concerned, during 1997, the total of international industrial design deposits, renewals and prolongations was 6,223, representing an increase of 6 per cent compared to 1996.

22. Work continued with a view to making the Hague system accessible to more countries. The Committee of Experts on the Development of the Hague Agreement concerning the International Deposit of Industrial Designs reviewed, in November 1997, the drafts of the International Bureau for a new Act of the Hague Agreement.

#### (e) WIPO Arbitration and Mediation Centre

23. During the period under review, the WIPO Arbitration and Mediation Centre continued to undertake a number of promotional activities on the features and advantages of this new service, including a conference on mediation in March 1997, two training programmes on mediation in intellectual property disputes in May 1997, a workshop for arbitrators in June 1997 and an advanced mediation workshop in May 1997.

24. As regards Internet domain name disputes, further to the signature by 56 entities of a Memorandum of Understanding on the generic Top Level Domain Name Space of the Internet Domain Name System on 1 May 1997, the Director General declared that the WIPO Arbitration and Mediation Centre was available for administering procedures for the settlement of disputes concerning second level domains registered in the generic top level domain name spaces covered by the Memorandum of Understanding.

#### (f) New adherences to treaties

25. The growing importance given to the effective protection of intellectual property was evidenced by the growing membership in WIPO-administered treaties. During 1997, the following States became party to or deposited an instrument of ratification of or accession to the following treaties (the figures in brackets indicate the total number of States party to the treaty as at 31 December 1997):

*Convention Establishing the World Intellectual Property Organization:* Cape Verde, Equatorial Guinea, Ethiopia, Papua New Guinea and Samoa (166);

*Paris Convention for the Protection of Industrial Property:* Bahrain, Equatorial Guinea and Sierra Leone (143);

*Berne Convention for the Protection of Literary and Artistic Works:* Bahrain, Belarus, Cape Verde, Dominican Republic, Equatorial Guinea, Guatemala, Indonesia and Mongolia (128);

*Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure:* Portugal, Slovenia, South Africa and Ukraine (42);

*International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome):* Cape Verde, Lebanon, Poland and the former Yugoslav Republic of Macedonia (56);

*Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Geneva):* Latvia and the former Yugoslav Republic of Macedonia (56);

*Strasbourg Agreement concerning the International Patent Classification:* Republic of Moldova (39);

*Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*: Democratic People's Republic of Korea and Republic of Moldova (52);

*Lisbon Agreement for the Protection of Appellations of Origin and their International Registration*: Costa Rica (18);

*Locarno Agreement Establishing an International Classification for Industrial Designs*: Democratic People's Republic of Korea and Republic of Moldova (30);

*Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks*: Cuba and the Republic of Moldova (11);

*Patent Cooperation Treaty (PCT)*: Gambia, Guinea-Bissau, Indonesia, Sierra Leone and Zimbabwe (94);

*Madrid Agreement concerning the International Registration of Marks*: Sierra Leone (47);

*Protocol relating to the Madrid Agreement*: France, Hungary, Iceland, Liechtenstein, Lithuania, Russian Federation, Slovakia, Slovenia, Switzerland and Yugoslavia (25);

*Hague Agreement concerning the International Deposit of Industrial Designs*: Greece and Mongolia (29);

*Trademark Law Treaty*: Australia, Cyprus, Denmark, Indonesia, Japan, Liechtenstein, Slovakia and Switzerland (14).

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## 10. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

### (a) Membership

The instrument of accession of the Government of South Africa to the Agreement Establishing IFAD was deposited with the Secretary-General of the United Nations on 14 February 1997, the date of its receipt. In accordance with article 13, section 3(b), the Agreement entered into force for South Africa on that day. Earlier, at its nineteenth session (17-18 January 1996), the Governing Council of IFAD had approved the non-original membership in IFAD of South Africa and decided that it should be classified as a member of category III in accordance with articles 3.2(b), 3.3(a), 4.2(b) and 13.1(c) of the Agreement Establishing IFAD and section 10 of the By-Laws for the Conduct of Business of the Fund.

### (b) Appointment of the President of IFAD

At its twentieth session (20-21 February 1997), the Governing Council decided on 20 February 1997 to reappoint Fawzi H. Al-Sultan, for a second term from 1997 to 2001, as President of IFAD and adopted by acclamation resolution 96/XX thereon.

### (c) Report on the Fourth Replenishment of IFAD's Resources

The Governing Council, at its twentieth session, completed the Fourth Replenishment of IFAD's Resources by adopting resolution 98/XX, which amended resolutions 87/XVIII and 93/XIX, also on the Fourth Replenishment. The resolution contained the definitive pledges of contributions of the member States and completed the earlier, main resolution (97/XVIII), by inserting or amending dates specified therein. The act of completing the Fourth Replenishment resolution also triggered the effectiveness of resolution 86/XVIII, which had been adopted by the Governing Council in 1995 and amended the Agreement Establishing IFAD and other basic legal documents so as to introduce a new governance structure. The new structure dispensed with the original system of those categories of membership (OECD, OPEC and developing countries) and introduced a system for distributing votes on the basis of the total amount of contribution made by each member State while reserving at least one third of the votes for developing countries. Consequential amendments were also made to the representation of the member States on the Executive Board.

The Governing Council, furthermore, adopted resolution 99/XX amending resolution 56/XII on the Third Replenishment of IFAD's Resources, thereby releasing for loan commitments the blocked portion of category I's Third Replenishment Supplementary Contributions:

#### *Resolution 99/XX:*

amended paragraph 1.3(b)(iv) of resolution 56/XII as follows (where an amendment is made, the text to be deleted is placed between square brackets):

“the supplementary portion of the contributions of category I shall be paid in parallel instalments to the remainder of its additional contributions in accordance with the provisions of paragraphs 8 and 12. [However, supplementary contributions of category I shall become available for use by the Fund pro rata in the proportion 3:1 as the supplementary contributions of category III become available]”.

### (d) Advance Commitment Authority

The Governing Council, at its twentieth session, adopted on 21 February 1997 resolution 100/XX on the provision of Advance Commitment Authority.

- (i) The resolution amended article 4, section 1, of the Agreement Establishing IFAD as follows (the text to be added is in italics):

“The resources of the Fund shall consist of:

- (i) Initial contributions;
- (ii) Additional contributions;
- (iii) Special contributions from non-member States and from other sources; and
- (iv) Funds derived *or to be derived* from operations or otherwise accruing to the Fund”.

- (ii) The resolution also amended:

Regulation IV, paragraph 1, of the Financial Regulations of IFAD as follows (the text to be added is in italics):

“The resources of the Fund shall consist of contributions received by the Fund and the funds derived *or to be derived* from operations or otherwise accruing to the Fund in accordance with article 4.1 of the Agreement”.

Through the resolution, the Governing Council authorized the Executive Board to make commitments for new loans and grants against foreseen loan repayments under special circumstances and with great caution, thus maximizing the resources received from the member States through the Fourth Replenishment. The advance commitment authority compensates, year by year, for fluctuations in the resources available for commitment and is established to act as a reserve resource.

### (e) Participation in the Heavily Indebted Poor Countries Debt Initiative (HIPC DI)

The Governing Council of IFAD at its twentieth session, on 21 February 1997, adopted resolution 101/XX. The resolution decided that:

- (i) IFAD shall participate in HIPC DI;
- (ii) The Executive Board may authorize the President of IFAD to conclude, on the basis of a recommendation from the President of IFAD, such agreements as may be necessary with the World Bank for the participation of IFAD in HIPC DI and the World Bank HIPC Trust Fund;
- (iii) IFAD participation in HIPC DI shall be either: (a) through direct participation in, and contribution to, the World Bank HIPC Trust Fund that is to be established and/or (b) through IFAD working in parallel, but in full coordination, with the said Trust Fund, dependent upon particular circumstances relating to heavily indebted poor countries to be assisted under the DI and/or such conditions as may be attached to specific bilateral donor contributions to IFAD for this purpose;
- (iv) The Executive Board may authorize the President of IFAD to approve for each country declared eligible under HIPC DI a debt relief package coordinated with the Trust Fund Administrator, the International Development Association (IDA), with the objective of reducing that country's debt to a sustainable level;
- (v) In paragraph 32 of the Lending Policies and Criteria (IFAD Lending Policies and Criteria), the following text shall be added after subparagraph (d) thereof:

“For the purposes of implementing the Heavily-Indebted Poor Countries Debt Initiative, the Executive Board may amend the terms upon which an approved loan is provided to a country. In determining the grace period, the maturity date and the amount of each instalment for the repayment of loans, the Executive Board shall take into account an assessment of a country's debt sustainability produced under the Heavily-Indebted Poor Countries Debt Initiative.”

The above resolution was adopted to enable IFAD to participate in HIPC DI, initiated by the World Bank and the International Monetary Fund, either through contributions to the World Bank HIPC Trust Fund or by setting up its own trust fund. IFAD later decided to set up its own trust fund.

(f) Loan administration and supervision of project implementation

Article 7, section 2(g), of the Agreement Establishing IFAD states, *inter alia*, “[T]he Fund shall entrust the administration of loans, for the purposes of the disbursement of the proceeds of the loan and the supervision of the implementation of the project or programme concerned, to competent international institutions.”

At its twentieth session, the Governing Council reviewed the report of the Joint Review on Supervision Issues for IFAD-Financed Projects and approved the five recommendations set out in the report.

Recommendation 5 stated: “[G]iven that learning about project implementation through supervision is the most effective way of learning from experience, IFAD should begin selecting experimental direct project supervision. Such supervision would cover a small, representative sample of IFAD-initiated projects, including some projects that are innovative in design or implementation approach.”

Pursuant to that recommendation, the Governing Council adopted resolution 102/XX in which it decided, *inter alia*, as follows:

“IFAD may supervise specific projects and programmes financed by it in accordance with recommendation 5 of the said report. Such supervision shall be limited to a small representative sample of IFAD-initiated projects, including some projects that are either innovative in design or explore new arrangements for implementation. IFAD may contract the administration of its loans and grants (procurement and disbursement) to competent public, national or international entities. IFAD supervision and administration arrangements shall be decided by the Executive Board at the same time as the approval of a loan or grant for a project or programme. No more than a total of 15 projects and no more than 3 projects per geographic region may be directly supervised and administered during a period of five years.

“This resolution shall enter into force and effect on the date of its adoption by the Governing Council and shall cease to be operational five years after the date of effectiveness of the last approved project referred to in the above paragraph. Prior to the latter date, the President shall submit the results of IFAD’s experience and conclusions on the said experimental activity on project supervision and loan administration to the Executive for its review. Based on its deliberation thereon, the Executive Board shall make appropriate recommendations for the consideration of the Governing Council on the future direction and approach.”

By adopting the above resolution, the Governing Council effectively suspended, on a trial basis, article 7, section 2(g), of the Agreement Establishing IFAD which is to the effect that IFAD shall entrust the administration of its loans and the supervision of implementation of its projects or programmes to other competent international institutions.

## 11. WORLD TRADE ORGANIZATION

### (a) Membership

During 1997, the Democratic Republic of the Congo and Congo became original members pursuant to article XI of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). In addition, Mongolia and Panama acceded to the WTO Agreement, making the total membership at the end of the year 132.

### (b) Dispute settlement

During 1997, 50 requests for consultations were received pursuant to article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. The Dispute Settlement Body established panels regarding the following cases:

*Hungary—Export Subsidies in Respect of Agricultural Products*: complaints by Argentina, Australia, Canada, New Zealand, Thailand and the United States of America (WT/DS35)

*Turkey—Taxation of Foreign Film Revenues*: complaint by the United States of America (WT/DS43)

*Argentina—Measures affecting Imports of Footwear, Textiles, Apparel and Other Items*: complaint by the United States of America (WT/DS56)

*United States of America—Import Prohibition of Certain Shrimp and Shrimp Products*: complaints by India, Malaysia, Pakistan and Thailand (WT/DS58)

*European Communities—Customs Classification of Certain Computer Equipment*: complaint by the United States of America (WT/DS62, WT/DS67 and WT/DS68)

*Guatemala—Anti-Dumping Investigation regarding Imports of Portland Cement from Mexico*: complaint by Mexico (WT/DS60)

*Australia—Measures affecting Importation of Salmon*: complaint by Canada (WT/DS18)

*Indonesia—Certain Measures affecting the Automobile Industry*: complaints by the European Communities (WT/DS54), Japan (WT/DS55) and the United States of America (WT/DS59)

*European Communities—Measures affecting Importation of Certain Poultry Products*: complaint by Brazil (WT/DS69)

*Korea—Taxes on Alcoholic Beverages*: complaints by the European Communities (WT/DS75) and the United States of America (WT/DS84)

*Argentina—Measures affecting Textiles and Clothing*: complaint by the European Communities (WT/DS77)

*India—Patent Protection for Pharmaceutical and Agricultural Chemical Products*: complaint by the European Communities (WT/DS79)

*European Communities—Measures affecting Butter Products*: complaint by New Zealand (WT/DS72)



*Japan—Measures affecting Agricultural Products*: complaint by the United States of America (WT/DS76)

*Chile—Taxes on Alcoholic Beverages*: complaint by the European Communities (WT/DS87)

During 1997, the Dispute Settlement Body adopted panel and Appellate Body reports on the following cases:

*United States of America—Restrictions on Imports of Cotton and Man-Made Fibre Underwear*: complaint by Costa Rica (WT/DS24)

*Brazil—Measures affecting Desiccated Coconut*: complaint by the Philippines (WT/DS22)

*United States of America—Measure affecting Imports of Woven Wool Shirts and Blouses*: complaint by India (WT/DS33)

*Canada—Certain Measures concerning Periodicals*: complaint by the United States of America (WT/DS31)

*European Communities—Regime for the Importation, Sale and Distribution of Bananas*: complaints by Ecuador, Guatemala, Honduras, Mexico and the United States of America (WT/DS27)

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## 12. INTERNATIONAL ATOMIC ENERGY AGENCY

### CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL<sup>222</sup>

During 1997, Cuba and Lebanon adhered to the Convention. By the end of the year, there were 60 parties.

### CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT<sup>223</sup>

During 1997, Lebanon, Myanmar, the Philippines and Singapore adhered to the Convention. By the end of the year, there were 80 parties.

### CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY<sup>224</sup>

In 1997, Lebanon, the Philippines and Singapore adhered to the Convention. By the end of the year, there were 75 parties.

### VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE, 1963<sup>225</sup>

During 1997, Lebanon ratified, and Belarus and Israel signed the Convention. By the end of the year, there were 28 parties.

JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION  
AND THE PARIS CONVENTION<sup>226</sup>

During 1997, the status of the Convention remained unchanged, with 20 parties.

CONVENTION ON NUCLEAR SAFETY<sup>227</sup>

During 1997, Argentina, Austria, Belgium, Brazil, Germany, Greece, Luxembourg, Pakistan, Peru and Singapore adhered to the Convention. By the end of the year, there were 42 parties.

JOINT CONVENTION ON THE SAFETY OF SPENT FUEL MANAGEMENT AND ON THE  
SAFETY OF RADIOACTIVE WASTE MANAGEMENT<sup>228</sup>

The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management was adopted on 5 September 1997 by a Diplomatic Conference (1-5 September 1997) and was opened for signature at Vienna on 29 September 1997 at the 41st General Conference of the International Atomic Energy Agency. The Convention will remain open for signature until its entry into force. During 1997, Argentina, Belgium, Brazil, the Czech Republic, Finland, France, Germany, Hungary, Indonesia, Ireland, Kazakhstan, Lebanon, Lithuania, Luxembourg, Morocco, Norway, Poland, the Republic of Korea, Romania, Slovakia, Slovenia, Sweden, Switzerland, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America signed the Convention. By the end of the year, there were 26 signatories.

PROTOCOL TO AMEND THE VIENNA CONVENTION ON CIVIL LIABILITY FOR  
NUCLEAR DAMAGE<sup>229</sup>

The Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage was adopted on 12 September 1997 by a Diplomatic Conference (8-12 September 1997) and was opened for signature at Vienna on 29 September 1997 at the 41st General Conference of the International Atomic Energy Agency. The Protocol will remain open for signature until its entry into force. During 1997, Argentina, Hungary, Indonesia, Lebanon, Lithuania, Morocco, Poland, Romania and Ukraine signed the Protocol. By the end of the year, there were 9 signatories.

CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE<sup>230</sup>

The Convention on Supplementary Compensation for Nuclear Damage was adopted on 12 September 1997 by a Diplomatic Conference (8-12 September 1997), and was opened for signature at Vienna on 29 September 1997 at the 41st General Conference of the International Atomic Energy Agency. The Convention will remain open for signature until its entry into force. During 1997, Argentina, Australia, Indonesia, Lebanon, Lithuania, Morocco, Romania, Ukraine and the United States of America signed the Convention. By the end of the year, there were 9 signatories.<sup>231</sup>

## EXTENSION OF THE AFRICAN REGIONAL COOPERATIVE AGREEMENT FOR RESEARCH, DEVELOPMENT AND TRAINING RELATED TO NUCLEAR ENERGY<sup>232</sup>

In 1997, Uganda accepted the extension of the Agreement, making a total of 21 parties.

## SECOND AGREEMENT TO EXTEND THE 1987 REGIONAL COOPERATIVE AGREEMENT FOR RESEARCH, DEVELOPMENT AND TRAINING RELATED TO NUCLEAR SCIENCE AND TECHNOLOGY, 1987 (RCA)<sup>233</sup>

In 1997, the Second Extension Agreement entered into force in accordance with its terms, and the 1987 RCA continues in force for a further five-year period with effect from 12 June 1997.

By the end of 1997, 13 States parties had accepted the extension of the Agreement: Australia, Bangladesh, China, India, Japan, Malaysia, Mongolia, New Zealand, Pakistan, Republic of Korea, Singapore, Sri Lanka and Viet Nam.

## SAFEGUARDS AGREEMENTS

During 1997, Safeguards Agreements pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons entered into force with Algeria,<sup>234</sup> Belize,<sup>235</sup> the Czech Republic,<sup>236</sup> Estonia<sup>237</sup> and Slovenia.<sup>238</sup> An additional Safeguards Agreement pursuant to the Non-Proliferation Treaty was concluded with Georgia, but has not yet entered into force.

Safeguards Agreements pursuant to the Non-Proliferation Treaty and the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) entered into force with Bahamas<sup>239</sup> and Guyana.<sup>240</sup>

One Protocol Additional to the Safeguards Agreement between Australia and IAEA pursuant to the Non-Proliferation Treaty entered into force.<sup>241</sup> A Protocol Additional to the Safeguards Agreement between Armenia and IAEA<sup>242</sup> was concluded, pursuant to the Non-Proliferation Treaty; pending the entry into force, the Protocol shall apply provisionally upon signature. A Protocol Additional to the Safeguards Agreement between Georgia and IAEA was concluded pending the entry into force of the Safeguards Agreement pursuant to the Non-Proliferation Treaty; four Protocols Additional to Safeguards Agreements pursuant to the Non-Proliferation Treaty were concluded with Lithuania, the Philippines, Poland and Uruguay, but have not yet entered into force.

An Agreement by exchange of letters was concluded between Argentina and IAEA confirming that the Safeguards Agreement concluded between Argentina, Brazil, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials and IAEA (the Quadripartite Agreement) also satisfies the obligation of Argentina under article 13 of the Treaty of Tlatelolco and under article III of the Non-Proliferation Treaty.<sup>243</sup> An Agreement by exchange of letters was concluded between Brazil and IAEA confirming that the Safeguards Agreement concluded between Argentina, Brazil, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials and IAEA (the Quadripartite Agreement) also satisfies the obligation of Brazil under article 13 of the Treaty of Tlatelolco.<sup>244</sup>

Agreements by exchange of letters were also concluded between Belize,<sup>245</sup> Dominica,<sup>246</sup> Saint Kitts and Nevis,<sup>247</sup> Saint Vincent and the Grenadines<sup>248</sup> and IAEA confirming that the Safeguards Agreements concluded pursuant to the Non-Proliferation Treaty satisfy the obligation of Belize, Brazil, Dominica, Saint

Kitts and Nevis, and Saint Vincent and the Grenadines under article 13 of the Treaty of Tlatelolco.

By the end of 1997, there were 221 Safeguards Agreements in force with 137 States; 118 of these agreements had been concluded pursuant to the Non-Proliferation Treaty and/or the Treaty of Tlatelolco with 126 non-nuclear-weapon States. Voluntary offer agreements are in force with all five nuclear-weapon States.

#### LIABILITY FOR NUCLEAR DAMAGE

During the first part and second parts of its 17th session (February and April 1997, respectively), the Standing Committee on Liability for Nuclear Damage completed preparation of the entire texts of a draft protocol to amend the Vienna Convention on Civil Liability for Nuclear Damage and of a convention on supplementary funding. Notwithstanding that some States voiced their continuing concern regarding some provisions of both drafts, the Committee decided to transmit the draft texts, without bracketed provisions, for consideration by the IAEA Board of Governors.

In June 1997, the IAEA Board of Governors considered the report of the Standing Committee and authorized the Director General to convene a Diplomatic Conference for the consideration and adoption of the draft instruments prepared by the Committee.

The Diplomatic Conference was held from 8 to 12 September 1997; 81 States participated, and four international organizations and three non-governmental organizations attended as observers. The Conference adopted the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage by a non-recorded vote of 64 in favour to 1 against, with 2 abstentions. That vote included a vote of 21-0-0 by the parties to the Vienna Convention. According to a special rule of procedure, a two-thirds majority of those present and voting which was required for adoption of the Protocol, including parts thereof or amendments thereto, needed to include a two-thirds majority of parties to the Vienna Convention present and voting. The Convention on Supplementary Compensation for Nuclear Damage was adopted by a vote of 66 in favour to 1 against, with 2 abstentions. Only a few modifications of substance were introduced in the drafts prepared by the Standing Committee.

The Protocol provides, *inter alia*, for: (i) the coverage of nuclear damage suffered in a non-Contracting State; an exception is allowed if such a State has a nuclear installation and does not afford reciprocal benefits; (ii) an enhanced definition of nuclear damage which covers the costs of reinstatement of damaged environment; (iii) costs of preventive measures; (iv) a substantially higher minimum liability limit (at least 300 million SDRs, which may be divided between the liable operator and the Installation State); and (v) an extension of the period for submission of claims for loss of life and personal injury to 30 years. All States may sign and adhere to the Protocol, i.e., not only parties to the Vienna Convention. It is provided, however, that a State adhering to the Protocol, failing an expression of a different intention at the time of the deposit of the requisite instrument of consent to be bound, shall also be bound by the provisions of the Vienna Convention in relation to parties only to that Convention. The Protocol will enter into force three months after the date of the fifth instrument of ratification, acceptance or approval.

The Convention on Supplementary Compensation has established a system to generate compensation for nuclear damage in addition to that available under the national legislation. It applies to nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable under either the Vienna Convention or Paris Convention or national law which complies with the provisions of the annex to the Convention (containing liability provisions consistent with those of the Vienna and Paris Conventions). When the national compensation amount of not less than 300 million SDRs (corresponding to the amount provided for in the Protocol) is exhausted, additional compensation is provided jointly by States parties in accordance with a specific formula (contributions of individual States are based on the installed nuclear capacity of their nuclear reactors and their United Nations rate of assessment). States without nuclear reactors and which are at the minimum United Nations rate of assessment are exempt from contributing to the fund. In order to avoid an unbalanced financial burden on a State party with a large nuclear power capacity, its contribution is capped at its United Nations rate of assessment expressed as a percentage, plus eight percentage points. This "cap" will, however, phase out when the total installed nuclear capacity of States parties reaches the level of 625,000 units. Also, the incident State of the liable operator cannot avail itself of the cap.

The Convention is open for signature by all States. The instruments of adherence shall be accepted, however, only from a State party to either the Vienna Convention or the Paris Convention on Third Party Liability in the Field of Nuclear Energy, or a State whose national law complies with the provisions of the annex to the Convention. In the case of a State having on its territory a nuclear installation, it must be a Contracting State to the Convention on Nuclear Safety of 17 June 1994. The Convention contains a clause which allows a State having well-developed national nuclear liability legislation with "economic channelling" to participate in it without changing its legislation. The Convention will enter into force on the ninetieth day following the date on which at least five States with a minimum of 400,000 units of installed nuclear capacity have deposited an instrument of ratification, accession or approval.

Both the Protocol and the Convention have a phasing-in mechanism which allows a State to join them, during an interim period, with a lower national compensation amount. They also contain a provision providing, as an exception to the general rule, that in case of incidents within a State party's exclusive economic zone or an area not exceeding its limits, jurisdiction over actions concerning nuclear damage will lie with the courts of that State. The Director General is the depositary for both instruments.

As at 1 September 1998, the Protocol and the Convention had 13 signatories each.

#### SAFETY OF RADIOACTIVE WASTE MANAGEMENT

The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management was adopted on 5 September 1997, after two years of *travaux préparatoires*, by 84 States at a Diplomatic Conference convened at Vienna by the International Atomic Energy Agency.<sup>249</sup>

The Joint Convention was opened for signature on 29 September 1997 in conjunction with the forty-first session of the General Conference of IAEA. By the end of 1997, 26 States had signed the Convention.

The Joint Convention is the first legal instrument to address directly the issues of safety in the context of spent nuclear fuel and radioactive wastes on a global scale. It applies to spent fuel and radioactive wastes resulting from civilian nuclear reactors and applications, and to spent fuel and radioactive waste from military or defence programmes if and when such materials are transferred permanently to and managed within exclusively civilian programmes, or when declared as spent fuel or radioactive waste for the purpose of the Joint Convention by the Contracting Party. Spent fuel held at a reprocessing facility as part of reprocessing activities is covered by the Joint Convention only if the Contracting Parties declare it to be so. The Joint Convention also applies to planned and controlled releases into the environment of liquid or gaseous radioactive materials from regulated nuclear facilities.

The Joint Convention imposes obligations on Contracting Parties related to ensuring the safety of spent fuel and radioactive waste management largely based on the principles contained in the IAEA Safety Fundamentals document entitled "The Principles of Radioactive Waste Management", published in 1995. It further contains requirements related to the transboundary movement of spent fuel and radioactive waste (based on the 1990 IAEA Code of Practice on the International Transboundary Movement of Radioactive Waste) and to the safe management of disused sealed sources.

The Joint Convention establishes a mechanism whereby each Contracting Party is obliged to submit for review by meetings of Contracting Parties a report on the measures taken to implement each of the obligations under the Convention.

The Convention will enter into force on the ninetieth day after the twenty-fifth instrument of ratification is deposited with IAEA, including the instruments of 15 States that each have an operational nuclear power plant.

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#### NOTES

<sup>1</sup>For detailed information, see *The United Nations Disarmament Yearbook*, vol. 22: 1997 (United Nations publication, Sales No. E.98.IX.1).

<sup>2</sup>United Nations document A/50/1027, annex.

<sup>3</sup>Multiple independently targetable re-entry vehicles.

<sup>4</sup>Intercontinental ballistic missiles.

<sup>5</sup>United Nations, *Treaty Series*, vol. 729, p. 159; see also *Status of Multilateral Arms Regulation and Disarmament Agreements*, 4th ed.: 1992, vol. 1 (United Nations publication, Sales No. E.93.IX.11 (vol.1)). The next Review Conference will be held in 2000.

<sup>6</sup>INFCIRC/540.

<sup>7</sup>GC(41)/RES/23.

<sup>8</sup>INFCIRC/546. For the text of the Convention, see chapter IV of this *Yearbook*.

<sup>9</sup>*International Legal Materials*, vol. 35 (1996), p. 635.

<sup>10</sup>United Nations, *Treaty Series*, vol. 634, p. 281.

<sup>11</sup>*Ibid.*, vol. 1445, p. 177.

<sup>12</sup>United Nations document A/50/426, annex; see also *International Legal Materials*, vol. 35 (1996), p. 698.

<sup>13</sup>United Nations document A/51/218, annex; see also *I.C.J. Reports* 1996, p. 226.

<sup>14</sup>Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction: General Assembly resolution 2826 (XXVI), annex.

<sup>15</sup>BWC/AD HOC GROUP/35.

<sup>16</sup>BWC/CONF.III/23, part II.

<sup>17</sup>Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on Their Destruction: document CD/CW/WP.400/Rev.1.

<sup>18</sup>United Nations document A/52/298.

<sup>19</sup>United Nations document A/52/289.

<sup>20</sup>United Nations document A/52/312 and Corr.1 and 2, and Add.1-4.

<sup>21</sup>United Nations document A/52/316.

<sup>22</sup>United Nations document A/52/298, annex.

<sup>23</sup>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 and Disarmament Agreements*, 4th ed.: 1992, vol. 1 (United Nations publication, Sales No. E.93.IX.11 (vol. 1)).

<sup>24</sup>See *Status of Multilateral Arms Regulation and Disarmament Agreements*, 5th ed.: 1996 (United Nations publication, Sales No. E.97.IX.3).

<sup>25</sup>The International Campaign to Ban Landmines, begun in 1991, is a coalition of over 1,000 NGOs in over 60 countries working to ban landmines.

<sup>26</sup>CD/1478; see also ST/LEG (092) C766.

<sup>27</sup>In connection with post-conflict peace-building, see the United Nations Institute for Disarmament Research (UNIDIR) study series on the management of arms in peace processes, which discusses the experience of United Nations peacekeeping and other missions in Bosnia and Herzegovina, Cambodia, Croatia, El Salvador, Haiti, Liberia, Mozambique, Nicaragua, Rhodesia/Zimbabwe and Somalia.

<sup>28</sup>S/PRST/1997/46.

<sup>29</sup>AG/RES (XXVII-O/97); A/53/78.

<sup>30</sup>United Nations document A/53/78, annex.

<sup>31</sup>Military Balance 1997/98, International Institute for Strategic Studies.

<sup>32</sup>See *Status of Multilateral Arms Regulation and Disarmament Agreements*, 4th ed.: 1992 (United Nations publication, Sales No. E.93.IX.11 (vol. 1)); see also *International Legal Materials*, vol. 30 (1991), p. 6.

<sup>33</sup>For information concerning cooperation between the United Nations and OSCE, see the relevant report of the Secretary-General (A/52/450).

<sup>34</sup>For the report of the Subcommittee, see A/AC.105/674.

<sup>35</sup>A/AC.105/672, para. 80.

<sup>36</sup>A/AC.105/635 and Add.1-4.

<sup>37</sup>A/AC.105/C.2/L.204.

<sup>38</sup>A/AC.105/C.2/1997/CRP.3/Rev.1.

<sup>39</sup>See A/AC.105/C.2/L.206/Rev.1. The five treaties are: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (General Assembly resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex); and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (General Assembly resolution 34/68, annex).

<sup>40</sup>For the report of the Committee, see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 20* (A/52/20).

<sup>41</sup>A/52/307.

<sup>42</sup>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).

<sup>43</sup>*Official Records of the General Assembly, Fifty-second Session, Supplement No. 1* (A/52/1).

<sup>44</sup>A/52/209.

<sup>45</sup>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.

<sup>46</sup>A/50/60-S/1995/1; see *Official Records of the Security Council, Fiftieth Year, Supplement for January, February and March 1995*, document S/1995/1.

<sup>47</sup>*Official Records of the Security Council, Fiftieth Year, Resolutions and Decisions of the Security Council, 1995*, document S/PRST/1995/9.

<sup>48</sup>A/50/711-S/1995/911; see *Official Records of the Security Council, Fiftieth Year, Supplement for October, November and December 1995*, document S/1995/911.

<sup>49</sup>*Official Records of the Security Council, Fiftieth Year, Supplement for January, February and March 1995*, document S/1995/234.

<sup>50</sup>*Ibid.*, *Supplement for April, May and June 1995*, document S/1995/438.

<sup>51</sup>*Ibid.*, *Fifty-first Year, Supplement for January, February and March 1996*, document S/1996/54.

<sup>52</sup>For the report on the session, see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 25* (A/52/25).

<sup>53</sup>UNEP/GC.19/32.

<sup>54</sup>UNEP/GC.19/INF.12.

<sup>55</sup>UNEP/GC.19/INF.18.

<sup>56</sup>UNEP/GC.19/30 and UNEP/GC.19/INF.13.

<sup>57</sup>A/52/82, annex.

<sup>58</sup>A/52/82/Add.1, annex.

<sup>59</sup>ICCD/COP(1) 11 and Add.1.

<sup>60</sup>A/AC.241/15/Rev.3.

<sup>61</sup>ICCD/COP(1)/11/Add.1, decision 24/COP.1.

<sup>62</sup>See *Official Records of the Economic and Social Council, 1995, Supplement No. 12* (E/1995/32), chap. I, para. 230 (i).

<sup>63</sup>UNEP/Bio. Div./N7-INC.5/4.

<sup>64</sup>See A/52/441.

<sup>65</sup>*Ibid.*, annex II, decision III/11.

<sup>66</sup>*Ibid.*, decision III/12.

<sup>67</sup>A/52/208/Add.1.

<sup>68</sup>E/CN.15/1997/7.

<sup>69</sup>E/CN.15/1997/7/Add.1.

<sup>70</sup>E/CN.15/1997/Add.2, annex.

<sup>71</sup>E/CN.15/1997/11 and Add.1.

<sup>72</sup>General Assembly resolution 48/104.

<sup>73</sup>General Assembly resolution 44/25, annex.

<sup>74</sup>General Assembly resolution 34/180, annex.

<sup>75</sup>General Assembly resolution 44/25, annex.

<sup>76</sup>See General Assembly resolution 2200 A (XXI), annex.

<sup>77</sup>A/52/356.

<sup>78</sup>General Assembly resolution 45/158, annex.

<sup>79</sup>United Nations, *Treaty Series*, vol. 212, p. 17.

<sup>80</sup>E/CN.15/1997/3.

<sup>81</sup>E/CN.15/1997/3/Add.1, annex.

<sup>82</sup>See E/1996/99.

<sup>83</sup>General Assembly resolution 51/191, annex.

<sup>84</sup>General Assembly resolution 51/59, annex.

<sup>85</sup>General Assembly resolution 45/117, annex.



- <sup>86</sup>General Assembly resolution 45/116, annex.
- <sup>87</sup>A/49/748, annex, chap. I, sect. A.
- <sup>88</sup>See A/CONF.169/16.
- <sup>89</sup>*Official Records of the Economic and Social Council, 1997, Supplement No. 10 and corrigenda (E/1997/30 and Corr.1).*
- <sup>90</sup>*Ibid.*, chap. II.
- <sup>91</sup>United Nations, *Treaty Series*, vol. 520, p. 151.
- <sup>92</sup>*Ibid.*, vol. 1019, p. 175.
- <sup>93</sup>*Ibid.*, vol. 976, p. 3.
- <sup>94</sup>E/CONF.82/15 and Corr.2; issued also as a United Nations publication (Sales No. E.91.XI.6).
- <sup>95</sup>General Assembly resolution S-17/2, annex.
- <sup>96</sup>E/1997/48.
- <sup>97</sup>See A/49/139-E/1994/57.
- <sup>98</sup>See the *Report of the International Conference on Drug Abuse and Illicit Trafficking*, Vienna, 17-26 June 1987 (United Nations publication, Sales No. E.87.I.18), chap. I, sect. A.
- <sup>99</sup>A/52/296.
- <sup>100</sup>United Nations, *Treaty Series*, vol. 993, p. 3.
- <sup>101</sup>*Ibid.*, vol. 999, p. 171.
- <sup>102</sup>*Ibid.*
- <sup>103</sup>General Assembly resolution 44/128, annex.
- <sup>104</sup>Resolution 217 A (III).
- <sup>105</sup>A/52/446.
- <sup>106</sup>United Nations, *Treaty Series*, vol. 660, p. 195.
- <sup>107</sup>See A/52/471.
- <sup>108</sup>The report of the Committee is contained in *Official Records of the General Assembly, Fifty-second Session, Supplement No. 18 (A/52/18)*.
- <sup>109</sup>United Nations, *Treaty Series*, vol. 1015, p. 243.
- <sup>110</sup>*Ibid.*, vol. 1249, p. 13.
- <sup>111</sup>A/52/355.
- <sup>112</sup>*World Congress against Commercial Sexual Exploitation of Children, Stockholm, 27-31 August 1996, Final Report of the Congress*, two volumes (Stockholm, Government of Sweden, January 1997).
- <sup>113</sup>*Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II.
- <sup>114</sup>A/CONF.157/24 (Part I), chap. III.
- <sup>115</sup>*Official Records of the General Assembly, Fifty-second Session, Supplement No. 38 (A/52/38/Rev.1)*.
- <sup>116</sup>A/52/337.
- <sup>117</sup>A/52/352.
- <sup>118</sup>United Nations, *Treaty Series*, vol. 1465, p. 85.
- <sup>119</sup>General Assembly resolution 44/25, annex.
- <sup>120</sup>A/52/348.
- <sup>121</sup>A/52/523.
- <sup>122</sup>General Assembly resolution 45/158, annex.
- <sup>123</sup>A/52/359.
- <sup>124</sup>General Assembly resolution 217 A (III).
- <sup>125</sup>A/CONF.157/24 (Part I), chap. III.
- <sup>126</sup>General Assembly resolution 41/128, annex.
- <sup>127</sup>*Official Records of the General Assembly, Fifty-second Session, Supplement No. 36 (A/52/36)*.
- <sup>128</sup>United Nations, *Treaty Series*, vol. 189, p. 137.
- <sup>129</sup>*Ibid.*, vol. 606, p. 267.
- <sup>130</sup>*Ibid.*, vol. 360, p. 117.

<sup>131</sup>Ibid., vol. 989, p. 175.

<sup>132</sup>For detailed information, see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 12 (A/52/12)*, and *ibid.*, *Supplement No. 12A (A/52/12/Add.1)*.

<sup>133</sup>A/52/375-S/1997/729; see *Official Records of the Security Council, Fifty-second Year, Supplement for July, August and September 1997*, document S/1997/729.

<sup>134</sup>A/52/582-S/1997/868 and Corr.1; see *Official Records of the Security Council, Fifty-second Year, Supplement for October, November and December 1997*, document S/1997/868.

<sup>135</sup>General Assembly resolution 22 A (I); United Nations, *Treaty Series*, vol. 1, p. 15.

<sup>136</sup>General Assembly resolution 179 (II); United Nations, *Treaty Series*, vol. 33, p. 261.

<sup>137</sup>General Assembly resolution 49/59, annex.

<sup>138</sup>A/52/548.

<sup>139</sup>United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Sixteenth Session*, vol. 1, *Resolutions*, p. 135.

<sup>140</sup>A/52/211.

<sup>141</sup>See *The Law of the Sea: Official Texts of the United Nations Convention on the Law of the Sea of 10 December 1982 and of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 with Index and Excerpts from the Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.97.V.10).

<sup>142</sup>A/52/487 and Corr.1.

<sup>143</sup>SPLOS/14.

<sup>144</sup>See chapter VII of this *Yearbook*.

<sup>145</sup>See section 5 below.

<sup>146</sup>See chap. IV, sect. A, 2.

<sup>147</sup>See chap. II, sect. A, 2(i).

<sup>148</sup>A/52/555.

<sup>149</sup>A/CONF.164/37; see also A/50/550, annex I.

<sup>150</sup>A/52/555.

<sup>151</sup>For the composition of the Court, see *International Court of Justice Yearbook, 1997-1998*, No. 52, chap. I.I.

<sup>152</sup>As at 31 December 1997, the number of States recognizing the jurisdiction of the Court as compulsory, in accordance with the declaration filed under Article 36, paragraph 2, of the Statute of the Court, remained at 61.

<sup>153</sup>For detailed information, see *International Court of Justice Yearbooks, 1996-1997*, No. 51, and 1997-1998, No. 52.

<sup>154</sup>*Official Records of the General Assembly, Fifty-second Session, Supplement No. 4 (A/52/4)*.

<sup>155</sup>For the membership of the International Law Commission, see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 10 (A/52/10)*, chap. I, sect. A.

<sup>156</sup>For detailed information, see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 10 (A/52/10)*.

<sup>157</sup>A/CN.4/480 and Add.1 and Corr.1.

<sup>158</sup>A/CN.4/477 and Add.1.

<sup>159</sup>For the text of the Preliminary Conclusions, see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 10 (A/52/10)*, pp. 126-127.

<sup>160</sup>The bilingual (English/French) proceedings of the Colloquium were published in *Making Better International Law: The International Law Commission at 50* (United Nations publication, Sales No. E/F.98.V.5).

<sup>161</sup>For the membership of the United Nations Commission on International Trade, see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 17 (A/52/17)*, chap. I, sect. B, as well as General Assembly decision 52/314.

<sup>162</sup>For detailed information, see *Yearbook of the United Nations Commission on International Trade Law*, vol. XXVIII: 1997.

<sup>163</sup>See sect. 7 (b) below for the text of the Model Law.

- <sup>164</sup>A/CN.9/436.
- <sup>165</sup>A/CN.9/438.
- <sup>166</sup>A/CN.9/432 and A/CN.9/434.
- <sup>167</sup>A/CONF.97/18.
- <sup>168</sup>A/CONF.89/13.
- <sup>169</sup>A/CN.9/SER.C/ABSTRACTS/10-12.
- <sup>170</sup>*Official Records of the General Assembly, Fifty-second Session, Supplement No. 17 (A/52/17)*.
- <sup>171</sup>United Nations, *Treaty Series*, vol. 330, p. 3.
- <sup>172</sup>A/52/294.
- <sup>173</sup>A/52/524.
- <sup>174</sup>A/52/363.
- <sup>175</sup>See *Official Records of the General Assembly, Fifty-second Session, Sixth Committee*, 30th meeting (A/C.6/52/SR.30), and corrigendum.
- <sup>176</sup>A/C.6/52/3.
- <sup>177</sup>Resolution 2625 (XXV), annex.
- <sup>178</sup>*Official Records of the General Assembly, Fifty-second Session, Supplement No. 26 (A/52/26)*.
- <sup>179</sup>*Ibid.*, *Supplement No. 33* and corrigendum (A/52/33 and Corr.1).
- <sup>180</sup>*Ibid.*, *Fifty-first Session, Supplement No. 33 (A/51/33)*, para. 56.
- <sup>181</sup>*Ibid.*, *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1), para. 59.
- <sup>182</sup>*Ibid.*, para. 29.
- <sup>183</sup>*Ibid.*, *Fifty-first Session, Supplement No. 33 (A/51/33)*, para. 128.
- <sup>184</sup>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, A/51/317 and A/52/308.
- <sup>185</sup>A/50/1011.
- <sup>186</sup>A/51/950 and Add.1-7.
- <sup>187</sup>A/52/317 and Corr.1.
- <sup>188</sup>A/52/308.
- <sup>189</sup>See *Official Records of the General Assembly, Fifty-second Session, Supplement No. 37 (A/52/37)*.
- <sup>190</sup>See A/C.6/52/L.3, annex I.
- <sup>191</sup>See General Assembly resolution 50/6.
- <sup>192</sup>A/52/142/Add.1.
- <sup>193</sup>For detailed information, see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 14 (A/53/14)*. Report covers the period 1 July 1996 to 30 June 1998.
- <sup>194</sup>A/52/492.
- <sup>195</sup>A/52/367, annex.
- <sup>196</sup>A/52/559, annex.
- <sup>197</sup>ILC, 85th session 1997, *Record of Proceedings*, Nos. 1 and 10; pp. 248-250 and 304; *Official Bulletin of the ILO*, vol. LXXX, 1997, Series A, No. 2.
- <sup>198</sup>ILC, 85th session 1997, *Record of Proceedings*, Nos. 1, 2, 9, 10 and 15A, pp. 16-18 and 248-250; *Official Bulletin of the ILO*, vol. LXXX, 1997, Series A, No. 2.
- <sup>199</sup>*Official Bulletin of the ILO*, vol. LXXX, 1997, Series A, No. 2. (Information on the preparatory work for the adoption of the instruments is given in order to facilitate reference work. These instruments have been adopted using the *single discussion* procedure.) Regarding the preparatory work, see: Revision of the Fee-Charging Employment Agencies Convention (Revised), 19149 (No. 96), ILC, 85th session (1997), Reports IV(1) and IV(2). See also ILC, 85th session (1997), *Record of Proceedings*, No. 16 (rev.), pp. 267-273 and p. 304.

<sup>200</sup>This report has been published as report III (part 1) to the 86th session of the Conference (1998) and comprises two volumes: vol. 1A, General Report and Observations concerning particular countries (report III (part 1A)) and vol. 1B, General Survey of the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983 (report III (part 1B)).

<sup>201</sup>GB.268/15/2.

<sup>202</sup>GB.268/15/3.

<sup>203</sup>GB.268/15/4.

<sup>204</sup>GB.270/16/1.

<sup>205</sup>GB.270/16/2.

<sup>206</sup>GB.270/16/3.

<sup>207</sup>GB.270/16/4.

<sup>208</sup>GB.270/16/5.

<sup>209</sup>GB.267/16/2.

<sup>210</sup>GB.268/5/1, GB.268/14/8.

<sup>211</sup>*Official Bulletin* of the ILO, vol. LXXX, 1997, Series B, No. 1.

<sup>212</sup>*Ibid.*, vol. LXXX, 1997, Series B, No. 2.

<sup>213</sup>*Ibid.*, vol. LXXX, 1997, Series B, No. 3.

<sup>214</sup>GB.268/WP/SDL/1, GB.268/WP/SDL/1/2, GB.268/WP/SDL/1/2(Add.), GB.268/WP/SDL/1/3 (Add.1), GB.268/WP/SDL/1/3 (Corr.).

<sup>215</sup>GB.270/WP/SDL/1/1, GB.270/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.

<sup>216</sup>GB.268/LILS/WP/PRS/1, GB.268/LILS/WP/PRS/1 (Corr.), GB.268/LILS/WP/PRS/2, GB.268/LILS/5.

<sup>217</sup>GB.270/LILS/WP/PRS/1/1, GB.270/LILS/WP/PRS/1/2, GB.270/LILS/WP/PRS/2, GB.270/LILS/WP/PRS/2 (Corr.), GB.270/LILS/3.

<sup>218</sup>*The Inspection Panel of the World Bank Overview*, June 1998. Information is also available on the Inspection Panel's web site: [www.worldbank.org/ins-panel](http://www.worldbank.org/ins-panel).

<sup>219</sup>The text of the ICSID Convention is reproduced in *Juridical Yearbook 1986*, p. 186.

<sup>220</sup>The terms and conditions of the General Arrangements to Borrow (GAB) were adopted on 5 January 1962. Pursuant to the GAB, 11 industrial countries undertook to stand ready to make loans to the Fund under article VII, section 1, of the Articles of Agreement should supplementary resources be needed to forestall or cope with an impairment of the international monetary system. The GAB currently amount to SDR 17 billion. There is also an associated arrangement with Saudi Arabia for SDR 1.5 billion. On 19 November 1997, the Executive Board renewed the decision on the GAB, as amended, for a period of five years as from 26 December 1998.

<sup>221</sup>The reports of the sessions of the Legal Committee held during 1997 are contained in documents LEG 75/11 and LEG 76/12.

<sup>222</sup>INFCIRC/274/Rev.1.

<sup>223</sup>INFCIRC/335.

<sup>224</sup>INFCIRC/336.

<sup>225</sup>INFCIRC/500.

<sup>226</sup>INFCIRC/402.

<sup>227</sup>INFCIRC/449.

<sup>228</sup>INFCIRC/546.

<sup>229</sup>INFCIRC/566.

<sup>230</sup>INFCIRC/567.

<sup>231</sup>For the text of the Joint Convention, the Protocol and the Convention, see chap. IV of the present *Yearbook*.

<sup>232</sup>INFCIRC/377.

<sup>233</sup>INFCIRC/167/Add.18.

<sup>234</sup>INFCIRC/531.

<sup>235</sup>INFCIRC/532.

<sup>236</sup>INFCIRC/541.

- <sup>237</sup>INFCIRC/547.  
<sup>238</sup>INFCIRC/538.  
<sup>239</sup>INFCIRC/544.  
<sup>240</sup>INFCIRC/543.  
<sup>241</sup>INFCIRC/217/Add.1.  
<sup>242</sup>INFCIRC/445/Add.1.  
<sup>243</sup>INFCIRC/435/Mod.1.  
<sup>244</sup>INFCIRC/435/Mod.2.  
<sup>245</sup>INFCIRC/532/Mod.1.  
<sup>246</sup>INFCIRC/513/Mod.1.  
<sup>247</sup>INFCIRC/514/Mod.1.  
<sup>248</sup>INFCIRC/400/Mod.1.  
<sup>249</sup>INFCIRC/546.

## Chapter IV

### TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

#### A. Treaties concerning international law concluded under the auspices of the United Nations

##### 1. CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES.<sup>1</sup> DONE AT NEW YORK, 21 MAY 1997<sup>2</sup>

The Parties to the present Convention,

*Conscious* of the importance of international watercourses and the non-navigational uses thereof in many regions of the world,

*Having in mind* Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

*Considering* that successful codification and progressive development of rules of international law regarding non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

*Taking into account* the problems affecting many international watercourses resulting from, among other things, increasing demands and pollution,

*Expressing the conviction* that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations,

*Affirming* the importance of international cooperation and good-neighbourliness in this field,

*Aware* of the special situation and needs of developing countries,

*Recalling* the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration and Agenda 21,

*Recalling also* the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses,

*Mindful* of the valuable contribution of international organizations, both governmental and non-governmental, to the codification and progressive development of international law in this field,

*Appreciative of the work carried out by the International Law Commission on the law of the non-navigational uses of international watercourses,*

*Bearing in mind United Nations General Assembly resolution 49/52 of 9 December 1994,*

*Have agreed as follows:*

## PART I. INTRODUCTION

### *Article 1*

#### SCOPE OF THE PRESENT CONVENTION

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters.

2. The uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation.

### *Article 2*

#### USE OF TERMS

For the purposes of the present Convention:

(a) "Watercourse" means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

(b) "International watercourse" means a watercourse, parts of which are situated in different States;

(c) "Watercourse State" means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose member States part of an international watercourse is situated;

(d) "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

### *Article 3*

#### WATERCOURSE AGREEMENTS

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.

2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.

3. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements", which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.

4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.

5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

6. Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

#### *Article 4*

### PARTIES TO WATERCOURSE AGREEMENTS

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.

2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

### PART II. GENERAL PRINCIPLES

#### *Article 5*

### EQUITABLE AND REASONABLE UTILIZATION AND PARTICIPATION

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.



2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

### *Article 6*

#### FACTORS RELEVANT TO EQUITABLE AND REASONABLE UTILIZATION

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

- (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- (b) The social and economic needs of the watercourse States concerned;
- (c) The population dependent on the watercourse in each watercourse State;
- (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
- (e) Existing and potential uses of the watercourse;
- (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
- (g) The availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

### *Article 7*

#### OBLIGATION NOT TO CAUSE SIGNIFICANT HARM

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

## *Article 8*

### GENERAL OBLIGATION TO COOPERATE

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.

2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

## *Article 9*

### REGULAR EXCHANGE OF DATA AND INFORMATION

1. Pursuant to article 8, watercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.

2. If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

## *Article 10*

### RELATIONSHIP BETWEEN DIFFERENT KINDS OF USES

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs.

## PART III. PLANNED MEASURES

### *Article 11*

#### INFORMATION CONCERNING PLANNED MEASURES

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

## *Article 12*

### NOTIFICATION CONCERNING PLANNED MEASURES WITH POSSIBLE ADVERSE EFFECTS

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

## *Article 13*

### PERIOD FOR REPLY TO NOTIFICATION

Unless otherwise agreed:

(a) A watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;

(b) This period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.

## *Article 14*

### OBLIGATIONS OF THE NOTIFYING STATE DURING THE PERIOD FOR REPLY

During the period referred to in article 13, the notifying State:

(a) Shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and

(b) Shall not implement or permit the implementation of the planned measures without the consent of the notified States.

## *Article 15*

### REPLY TO NOTIFICATION

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.

## *Article 16*

### ABSENCE OF REPLY TO NOTIFICATION

1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

## *Article 17*

### CONSULTATIONS AND NEGOTIATIONS CONCERNING PLANNED MEASURES

1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.

2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.

3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

## *Article 18*

### PROCEDURES IN THE ABSENCE OF NOTIFICATION

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or per-

mitting the implementation of those measures for a period of six months unless otherwise agreed.

### *Article 19*

#### URGENT IMPLEMENTATION OF PLANNED MEASURES

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.

2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information.

3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

## PART IV. PROTECTION, PRESERVATION AND MANAGEMENT

### *Article 20*

#### PROTECTION AND PRESERVATION OF ECOSYSTEMS

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

### *Article 21*

#### PREVENTION, REDUCTION AND CONTROL OF POLLUTION

1. For the purpose of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

3. Watercourse States shall, at the request of any of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse, such as:

- (a) Setting joint water quality objectives and criteria;
- (b) Establishing techniques and practices to address pollution from point and non-point sources;

(c) Establishing lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

## *Article 22*

### INTRODUCTION OF ALIEN OR NEW SPECIES

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States.

## *Article 23*

### PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

Watercourse States shall, individually and, where appropriate, in cooperation with other States, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

## *Article 24*

### MANAGEMENT

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.
2. For the purposes of this article, "management" refers, in particular, to:
  - (a) Planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and
  - (b) Otherwise promoting the rational and optimal utilization, protection and control of the watercourse.

## *Article 25*

### REGULATION

1. Watercourse States shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.
2. Unless otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.
3. For the purposes of this article, "regulation" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

## *Article 26*

### INSTALLATIONS

1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.

2. Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regard to:

(a) The safe operation and maintenance of installations, facilities or other works related to an international watercourse; and

(b) The protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

## PART V. HARMFUL CONDITIONS AND EMERGENCY SITUATIONS

### *Article 27*

#### PREVENTION AND MITIGATION OF HARMFUL CONDITIONS

Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

### *Article 28*

#### EMERGENCY SITUATIONS

1. For the purposes of this article, "emergency" means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.

2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.

3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.

4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

## PART VI. MISCELLANEOUS PROVISIONS

### *Article 29*

#### INTERNATIONAL WATERCOURSES AND INSTALLATIONS IN TIME OF ARMED CONFLICT

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

### *Article 30*

#### INDIRECT PROCEDURES

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

### *Article 31*

#### DATA AND INFORMATION VITAL TO NATIONAL DEFENCE OR SECURITY

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

### *Article 32*

#### NON-DISCRIMINATION

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

### *Article 33*

#### SETTLEMENT OF DISPUTES

1. In the event of a dispute between two or more Parties concerning the interpretation or application of the present Convention, the Parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.



2. If the Parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.

3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the Parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the Parties otherwise agree.

4. A Fact-finding Commission shall be established, composed of one member nominated by each Party concerned and in addition a member not having the nationality of any of the Parties concerned chosen by the nominated members who shall serve as Chairman.

5. If the members nominated by the Parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any Party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the Parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other Party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.

6. The Commission shall determine its own procedure.

7. The Parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the Parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the Parties concerned shall consider in good faith.

9. The expenses of the Commission shall be borne equally by the Parties concerned.

10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory *ipso facto* and without special agreement in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice; and/or

(b) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (b).

## PART VII. FINAL CLAUSES

### *Article 34*

#### SIGNATURE

The present Convention shall be open for signature by all States and by regional economic integration organizations from 21 May 1997 until 20 May 2000 at United Nations Headquarters in New York.

### *Article 35*

#### RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. The present Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

2. Any regional economic integration organization which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of the United Nations of any substantial modification in the extent of their competence.

### *Article 36*

#### ENTRY INTO FORCE

1. The present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States.

### *Article 37*

#### AUTHENTIC TEXTS

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE at New York, this 21st day of May one thousand nine hundred and ninety-seven.

### **ANNEX**

#### **Arbitration**

### *Article 1*

Unless the parties to the dispute otherwise agree, the arbitration pursuant to article 33 of the Convention shall take place in accordance with articles 2 to 14 of the present annex.

### *Article 2*

The claimant party shall notify the respondent party that it is referring a dispute to arbitration pursuant to article 33 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute, the arbitral tribunal shall determine the subject matter.

### *Article 3*

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the Chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute or of any riparian State of the watercourse concerned, nor have his or her usual place of residence in the territory of one of these parties or such riparian State, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

### *Article 4*

1. If the Chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of a party, designate the Chairman within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice, who shall make the designation within a further two-month period.

#### *Article 5*

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

#### *Article 6*

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

#### *Article 7*

The arbitral tribunal may, at the request of one of the Parties, recommend essential interim measures of protection.

#### *Article 8*

1. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

2. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

#### *Article 9*

Unless the arbitral tribunal determines otherwise, because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

#### *Article 10*

Any Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

#### *Article 11*

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

#### *Article 12*

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

#### *Article 13*

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

#### Article 14

1. The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

2. The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

3. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

4. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

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## 2. AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA.<sup>3</sup> DONE AT NEW YORK, 23 MAY 1997<sup>4</sup>

The States Parties to the present Agreement,

*Considering* that the United Nations Convention on the Law of the Sea establishes the International Tribunal for the Law of the Sea,

*Recognizing* that the Tribunal should enjoy such legal capacity, privileges and immunities as are necessary for the exercise of its functions,

*Recalling* that the Statute of the Tribunal provides, in article 10, that the Members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities,

*Recognizing* that persons participating in proceedings and officials of the Tribunal should enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Tribunal,

*Have agreed* as follows:

#### Article 1

##### USE OF TERMS

For the purposes of this Agreement:

(a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) "Statute" means the Statute of the International Tribunal for the Law of the Sea in annex VI to the Convention;

(c) "States Parties" means States Parties to this Agreement;

(d) "Tribunal" means the International Tribunal for the Law of the Sea;

(e) "Member of the Tribunal" means an elected member of the Tribunal or a person chosen under article 17 of the Statute for the purpose of a particular case;

(f) "Registrar" means the Registrar of the Tribunal and includes any official of the Tribunal acting as Registrar;

(g) “officials of the Tribunal” means the Registrar and other members of the staff of the Registry;

(h) “Vienna Convention” means the Vienna Convention on Diplomatic Relations of 18 April 1961.

## *Article 2*

### JURIDICAL PERSONALITY OF THE TRIBUNAL

The Tribunal shall possess juridical personality. It shall have the capacity:

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

## *Article 3*

### INVIOABILITY OF THE PREMISES OF THE TRIBUNAL

The premises of the Tribunal shall be inviolable, subject to such conditions as may be agreed with the State Party concerned.

## *Article 4*

### FLAG AND EMBLEM

The Tribunal shall be entitled to display its flag and emblem at its premises and on vehicles used for official purposes.

## *Article 5*

### IMMUNITY OF THE TRIBUNAL, ITS PROPERTY, ASSETS AND FUNDS

1. The Tribunal shall enjoy immunity from legal process, except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, assets and funds of the Tribunal, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, seizure, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out its functions, the property, assets and funds of the Tribunal shall be exempt from restrictions, regulations, controls and moratoria of any nature.

4. The Tribunal shall have insurance coverage against third-party risks in respect of vehicles owned or operated by it, as required by the laws and regulations of the State in which the vehicle is operated.

## *Article 6*

### ARCHIVES

The archives of the Tribunal, and all documents belonging to it or held by it, shall be inviolable at all times and wherever they may be located. The State Party where the archives are located shall be informed of the location of such archives and documents.

## *Article 7*

### EXERCISE OF THE FUNCTIONS OF THE TRIBUNAL OUTSIDE THE HEADQUARTERS

In the event that the Tribunal considers it desirable to sit or otherwise exercise its functions elsewhere than at its headquarters, it may conclude with the State concerned an arrangement concerning the provision of the appropriate facilities for the exercise of its functions.

## *Article 8*

### COMMUNICATIONS

1. For the purposes of its official communications and correspondence, the Tribunal shall enjoy in the territory of each State Party, insofar as is compatible with the international obligations of the State concerned, treatment not less favourable than that which the State Party accords to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.

2. The Tribunal may use all appropriate means of communication and make use of codes or cipher for its official communications or correspondence. The official communications and correspondence of the Tribunal shall be inviolable.

3. The Tribunal shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.

## *Article 9*

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

1. The Tribunal, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes; it is understood, however, that the Tribunal shall not claim exemption from taxes which are no more than charges for public utility services.

2. The Tribunal shall be exempt from all customs duties, import turnover taxes and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Tribunal for its official use.

3. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of a State Party, except under conditions agreed with the Government of that State Party. The Tribunal shall also be ex-

empt from all customs duties, import turnover taxes, prohibitions and restrictions on imports and exports in respect of its publications.

### *Article 10*

#### REIMBURSEMENT OF DUTIES AND/OR TAXES

1. The Tribunal shall not, as a general rule, claim exemption from duties and taxes which are included in the price of movable and immovable property and taxes paid for services rendered. Nevertheless, when the Tribunal for its official use makes major purchases of property and goods or services on which duties and taxes are charged or are chargeable, States Parties shall make appropriate administrative arrangements for the exemption of such charges or reimbursement of the amount of duty and/or tax paid.

2. Goods purchased under such an exemption or reimbursement shall not be sold or otherwise disposed of, except in accordance with the conditions laid down by the State Party which granted the exemption or reimbursement. No exemption or reimbursement shall be accorded in respect of charges for public utility services provided to the Tribunal.

### *Article 11*

#### TAXATION

1. The salaries, emoluments and allowances paid to Members and officials of the Tribunal shall be exempt from taxation.

2. Where the incidence of any form of taxation depends upon residence, periods during which such Members or officials are present in a State for the discharge of their functions shall not be considered as periods of residence if such Members or officials are accorded diplomatic privileges, immunities and facilities.

3. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former Members and former officials of the Tribunal.

### *Article 12*

#### FUNDS AND FREEDOM FROM CURRENCY RESTRICTIONS

1. Without being restricted by financial controls, regulations or financial moratoriums of any kind, while carrying out its activities:

(a) the Tribunal may hold funds, currency of any kind or gold and operate accounts in any currency;

(b) the Tribunal shall be free to transfer its funds, gold or its currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) the Tribunal may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities.

2. In exercising its rights under paragraph 1, the Tribunal shall pay due regard to any representations made by any State Party insofar as it is considered that effect can be given to such representations without detriment to the interests of the Tribunal.



### *Article 13*

#### MEMBERS OF THE TRIBUNAL

1. Members of the Tribunal shall, when engaged on the business of the Tribunal, enjoy the privileges, immunities, facilities and prerogatives accorded to heads of diplomatic missions in accordance with the Vienna Convention.

2. Members of the Tribunal and members of their families forming part of their households shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Tribunal is sitting. On journeys in connection with the exercise of their functions, they shall in all countries through which they may have to pass enjoy all the privileges, immunities and facilities granted by these countries to diplomatic agents in similar circumstances.

3. If Members of the Tribunal, for the purpose of holding themselves at the disposal of the Tribunal, reside in any country other than that of which they are nationals or permanent residents, they shall, together with the members of their families forming part of their households, be accorded diplomatic privileges, immunities and facilities during the period of their residence there.

4. Members of the Tribunal shall be accorded, together with members of their families forming part of their households, the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

5. Members of the Tribunal shall have insurance coverage against third-party risks in respect of vehicles owned or operated by them, as required by the laws and regulations of the State in which the vehicle is operated.

6. Paragraphs 1 to 5 of this article shall apply to Members of the Tribunal even after they have been replaced if they continue to exercise their functions in accordance with article 5, paragraph 3, of the Statute.

7. In order to secure, for Members of the Tribunal, complete freedom of speech and independence in the discharge of their functions, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer Members of the Tribunal or performing those functions.

### *Article 14*

#### OFFICIALS

1. The Registrar shall, when engaged on the business of the Tribunal, be accorded diplomatic privileges, immunities and facilities.

2. Other officials of the Tribunal shall enjoy in any country where they may be on the business of the Tribunal, or in any country through which they may pass on such business, such privileges, immunities and facilities as are necessary for the independent exercise of their functions. In particular, they shall be accorded:

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

(b) the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to re-export the same free of duty to their country of permanent residence;

(c) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the official concerned;

(d) immunity from legal process in respect of words spoken or written and all acts done by them in discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(e) immunity from national service obligations;

(f) together with members of their families forming part of their household, exemption from immigration restrictions or alien registration;

(g) the same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions to the Government concerned;

(h) together with members of their families forming part of their household, the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

3. The officials of the Tribunal shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by them, as required by the laws and regulations of the State in which the vehicle is operated.

4. The Tribunal shall communicate to all States Parties the categories of officials to which the provisions of this article shall apply. The names of the officials included in these categories shall from time to time be communicated to all States Parties.

### *Article 15*

#### EXPERTS APPOINTED UNDER ARTICLE 289 OF THE CONVENTION

Experts appointed under article 289 of the Convention shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, such privileges, immunities and facilities as are necessary for the independent exercise of their functions. In particular, they shall be accorded:

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

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the expert concerned;

(c) immunity from legal process in respect of words spoken or written and acts done by them in discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

- (e) exemption from immigration restrictions or alien registration;
- (f) the same facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
- (g) such experts shall be accorded the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

### *Article 16*

#### AGENTS, COUNSEL AND ADVOCATES

1. Agents, counsel and advocates before the Tribunal shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, the privileges, immunities and facilities necessary for the independent exercise of their functions. In particular, they shall be accorded:

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

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the agent, counsel or advocate concerned;

(c) immunity from legal process in respect of words spoken or written and all acts done by them in discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

(e) the right to receive papers or correspondence by courier or in sealed bags;

(f) exemption from immigration restrictions or alien registration;

(g) the same facilities in respect of their personal baggage and in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(h) the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

2. Upon receipt of notification from parties to proceedings before the Tribunal as to the appointment of an agent, counsel or advocate, a certification of the status of such representative shall be provided under the signature of the Registrar and limited to a period reasonably required for the proceedings.

3. The competent authorities of the State concerned shall accord the privileges, immunities and facilities provided for in this article upon production of the certification referred to in paragraph 2.

4. Where the incidence of any form of taxation depends upon residence, periods during which such agents, counsel or advocates are present in a State for the discharge of their functions shall not be considered as periods of residence.

## *Article 17*

### WITNESSES, EXPERTS AND PERSONS PERFORMING MISSIONS

1. Witnesses, experts and persons performing missions by order of the Tribunal shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, the privileges, immunities and facilities provided for in article 15, subparagraphs (a) to (f).

2. Witnesses, experts and such persons shall be accorded repatriation facilities in time of international crises.

## *Article 18*

### NATIONALS AND PERMANENT RESIDENTS

Except insofar as additional privileges and immunities may be granted by the State Party concerned, and without prejudice to article 11, a person enjoying immunities and privileges under this Agreement shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only immunity from legal process and inviolability in respect of words spoken or written and all acts done by that person in the discharge of his or her duties, which immunity shall continue even after the person has ceased to exercise his or her functions in connection with the Tribunal.

## *Article 19*

### RESPECT FOR LAWS AND REGULATIONS

1. Privileges, immunities, facilities and prerogatives as provided for in articles 13 to 17 of this Agreement are granted not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions in connection with the Tribunal.

2. Without prejudice to their privileges and immunities, it is the duty of all persons referred to in articles 13 to 17 to respect the laws and regulations of the State Party in whose territory they may be on the business of the Tribunal or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that State.

## *Article 20*

### WAIVER

1. Inasmuch as the privileges and immunities provided for in this Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves, the competent authority has the right and the duty to waive the immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the administration of justice.

2. For this purpose, the competent authority in the case of agents, counsel and advocates representing or designated by a State which is a party to proceedings before the Tribunal will be the State concerned. In the case of other agents, counsel and advocates, the Registrar, experts appointed under article 289 of the

Convention and witnesses, experts and persons performing missions, the competent authority will be the Tribunal. In the case of other officials of the Tribunal, the competent authority will be the Registrar, acting with the approval of the President of the Tribunal.

### *Article 21*

#### LAISSEZ-PASSER AND VISAS

1. The States Parties shall recognize and accept the United Nations laissez-passer issued to members and officials of the Tribunal or experts appointed under article 289 of the Convention as a valid travel document.

2. Applications for visas (where required) from the Members of the Tribunal and the Registrar shall be dealt with as speedily as possible. Applications for visas from all other persons holding or entitled to hold laissez-passer referred to in paragraph 1 of this article and from persons referred to in articles 16 and 17, when accompanied by a certificate that they are travelling on the business of the Tribunal, shall be dealt with as speedily as possible.

### *Article 22*

#### FREEDOM OF MOVEMENT

No administrative or other restrictions shall be imposed on the free movement of Members of the Tribunal, as well as other persons mentioned in articles 13 to 17, to and from the Headquarters of the Tribunal or the place where the Tribunal is sitting or otherwise exercising its functions.

### *Article 23*

#### MAINTENANCE OF SECURITY AND PUBLIC ORDER

1. If the State Party concerned considers it necessary to take, without prejudice to the independent and proper working of the Tribunal, measures necessary for the security or for the maintenance of public order of the State Party in accordance with international law, it shall approach the Tribunal as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the Tribunal.

2. The Tribunal shall cooperate with the Government of such State Party to avoid any prejudice to the security or public order of the State Party resulting from its activities.

### *Article 24*

#### COOPERATION WITH THE AUTHORITIES OF STATES PARTIES

The Tribunal shall cooperate at all times with the appropriate authorities of States Parties to facilitate the execution of their laws and to prevent any abuse in connection with the privileges, immunities, facilities and prerogatives referred to in this Agreement.

## *Article 25*

### RELATIONSHIP WITH SPECIAL AGREEMENTS

Insofar as the provisions of this Agreement and the provisions of any special agreement between the Tribunal and a State Party relate to the same subject matter, the two provisions shall, whenever possible, be treated as complementary, so that both provisions shall be applicable and neither provision shall narrow the effect of the other; but in case of conflict the provision of the special agreement shall prevail.

## *Article 26*

### SETTLEMENT OF DISPUTES

1. The Tribunal shall make suitable provisions for the settlement of:

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

(b) disputes involving any person referred to in this Agreement who by reason of his official position enjoys immunity, if such immunity has not been waived.

2. All disputes arising out of the interpretation or application of this Agreement shall be referred to an arbitral tribunal unless the parties have agreed to another mode of settlement. If a dispute arises between the Tribunal and a State Party which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute, it shall at the request of either party be referred for final decision to a panel of three arbitrators: one to be chosen by the Tribunal, one to be chosen by the State Party and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators. If either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the Secretary-General of the United Nations shall make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third arbitrator within three months following the appointment of the first two arbitrators the third arbitrator shall be chosen by the Secretary-General of the United Nations upon the request of the Tribunal or the State Party.

## *Article 27*

### SIGNATURE

This Agreement shall be open for signature by all States and shall remain open for signature at United Nations Headquarters for twenty-four months from 1 July 1997.

## *Article 28*

### RATIFICATION

This Agreement is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### *Article 29*

#### ACCESSION

This Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### *Article 30*

#### ENTRY INTO FORCE

1. This Agreement shall enter into force 30 days after the date of deposit of the tenth instrument of ratification or accession.

2. For each State which ratifies this Agreement or accedes thereto after the deposit of the tenth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

### *Article 31*

#### PROVISIONAL APPLICATION

A State which intends to ratify or accede to this Agreement may at any time notify the depositary that it will apply this Agreement provisionally for a period not exceeding two years.

### *Article 32*

#### AD HOC APPLICATION

Where a dispute has been submitted to the Tribunal in accordance with the Statute, any State not a party to this Agreement which is a party to the dispute may, ad hoc for the purposes and duration of the case relating thereto, become a party to this Agreement by the deposit of an instrument of acceptance. Instruments of acceptance shall be deposited with the Secretary-General of the United Nations and shall become effective on the date of deposit.

### *Article 33*

#### DENUNCIATION

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement. The denunciation shall take effect one year after the date of receipt notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

*Article 34*

DEPOSITARY

The Secretary-General of the United Nations shall be the depositary of this Agreement.

*Article 35*

AUTHENTIC TEXTS

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, authorized thereto, have signed this Agreement.

OPENED FOR SIGNATURE at New York, this day of July, one thousand nine hundred and ninety-seven, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

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3. CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONNEL MINES AND ON THEIR DESTRUCTION.<sup>5</sup> DONE AT OSLO, 18 SEPTEMBER 1997<sup>6</sup>

PREAMBLE

*The States Parties,*

*Determined* to put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement,

*Believing* it necessary to do their utmost to contribute in an efficient and co-ordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction,

*Wishing* to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims,

*Recognizing* that a total ban of anti-personnel mines would also be an important confidence-building measure,

*Welcoming* the adoption of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices, as amended on 3 May 1996, annexed to the 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, and calling for the early ratification of this Protocol by all States which have not yet done so,

*Welcoming also* United Nations General Assembly resolution 51/45 S of 10 December 1996, urging all States to pursue vigorously an effective, legally bind-



ing international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines,

*Welcoming furthermore* the measures taken over the past years, both unilaterally and multilaterally, aiming at prohibiting, restricting or suspending the use, stockpiling, production and transfer of anti-personnel mines,

*Stressing* the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other non-governmental organizations around the world,

*Recalling* the Ottawa Declaration of 5 October 1996 and the Brussels Declaration of 27 June 1997 urging the international community to negotiate an international and legally binding agreement prohibiting the use, stockpiling, production and transfer of anti-personnel mines,

*Emphasizing* the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization in all relevant forums including, inter alia, the United Nations, the Conference on Disarmament, regional organizations, and groupings, and review conferences of 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,

*Basing themselves* on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants,

Have agreed as follows:

## *Article 1*

### GENERAL OBLIGATIONS

1. Each State Party undertakes never under any circumstances:
  - (a) To use anti-personnel mines;
  - (b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
  - (c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.
2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

## *Article 2*

### DEFINITIONS

1. "Anti-personnel mine" means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity

or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

2. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.

3. "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 or otherwise intentionally disturb the mine.

4. "Transfer" involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines.

5. "Mined area" means an area which is dangerous due to the presence or suspected presence of mines.

### *Article 3*

#### EXCEPTIONS

1. Notwithstanding the general obligations under article 1, the retention or transfer of a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques is permitted. The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.

2. The transfer of anti-personnel mines for the purpose of destruction is permitted.

### *Article 4*

#### DESTRUCTION OF STOCKPILED ANTI-PERSONNEL MINES

Except as provided for in article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.

### *Article 5*

#### DESTRUCTION OF ANTI-PERSONNEL MINES IN MINED AREAS

1. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.

2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced and shall ensure as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and

protected by fencing or other means, to ensure the effective exclusion of civilians, until all anti-personnel mines contained therein have been destroyed. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the use of Mines, Booby Traps and Other Devices, as amended on 3 May 1996, annexed to the 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. If a State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such anti-personnel mines, for a period of up to ten years.

4. Each request shall contain:

- (a) The duration of the proposed extension;
- (b) A detailed explanation of the reasons for the proposed extension, including:
  - (i) The preparation and status of work conducted under national demining programmes;
  - (ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and
  - (iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;
- (c) The humanitarian, social, economic, and environmental implications of the extension; and
- (d) Any other information relevant to the request for the proposed extension.

5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.

6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this article.

## *Article 6*

### INTERNATIONAL COOPERATION AND ASSISTANCE

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance, where feasible, from other States Parties to the extent possible.

2. Each State 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 Convention. The States Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

3. Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programmes. Such assistance may be provided, *inter alia*, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

4. Each State Party in a position to do so shall provide assistance for mine clearance and related activities. Such assistance may be provided, *inter alia*, through the United Nations system, international or regional organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled anti-personnel mines.

6. Each State 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.

7. States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental forums to assist its authorities in the elaboration of a national demining programme to determine, *inter alia*:

- (a) The extent and scope of the anti-personnel mine problem;
- (b) The financial, technological and human resources that are required for the implementation of the programme;
- (c) The estimated number of years necessary to destroy all anti-personnel mines in mined areas under the jurisdiction or control of the concerned State Party;
- (d) Mine awareness activities to reduce the incidence of mine-related injuries or deaths;
- (e) Assistance to mine victims;
- (f) The relationship between the Government of the concerned State Party and the relevant governmental, intergovernmental or non-governmental entities that will work in the implementation of the programme.

8. Each State Party giving and receiving assistance under the provisions of this article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programmes.

## *Article 7*

### TRANSPARENCY MEASURES

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on:

- (a) The national implementation measures referred to in article 9;

(b) The total of all stockpiled anti-personnel mines owned or possessed by it, or under its jurisdiction or control, to include a breakdown of the type, quantity and, if possible, lot numbers of each type of anti-personnel mine stockpiled;

(c) To the extent possible, the location of all mined areas that contain, or are suspected to contain, anti-personnel mines under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of anti-personnel mine in each mined area and when they were emplaced;

(d) The types, quantities and, if possible, lot numbers of all anti-personnel mines retained or transferred for the development of and training in mine detection, mine clearance or mine destruction techniques, or transferred for the purpose of destruction, as well as the institutions authorized by a State Party to retain or transfer anti-personnel mines, in accordance with article 3;

(e) The status of programmes for the conversion or decommissioning of anti-personnel mine production facilities;

(f) The status of programmes for the destruction of anti-personnel mines in accordance with articles 4 and 5, including details of the methods which will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;

(g) The types and quantities of all anti-personnel mines destroyed after the entry into force of this Convention for that State Party, to include a breakdown of the quantity of each type of anti-personnel mine destroyed, in accordance with articles 4 and 5, respectively, along with, if possible, the lot numbers of each type of anti-personnel mine in the case of destruction in accordance with article 4;

(h) The technical characteristics of each type of anti-personnel mine produced, to the extent known, and those currently owned or possessed by a State Party, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of anti-personnel mines; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information which may facilitate mine clearance; and

(i) The measures taken to provide an immediate and effective warning to the population in relation to all areas identified under paragraph 2 of article 5.

2. The information provided in accordance with this article shall be updated by the States Parties annually, covering the last calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.

3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

## *Article 8*

### FACILITATION AND CLARIFICATION OF COMPLIANCE

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.

2. If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information which would assist in clarifying this matter.

3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such Information shall be presented to the requested State Party which shall have the right to respond.

4. Pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.

5. The requesting State Party may propose through the Secretary-General of the United Nations the convening of a Special Meeting of the States Parties to consider the matter. The Secretary-General of the United Nations shall thereupon communicate this proposal and all information submitted by the States Parties concerned, to all States Parties with a request that they indicate whether they favour a Special Meeting of the States Parties, for the purpose of considering the matter. In the event that within 14 days from the date of such communication, at least one third of the States Parties favours such a Special Meeting, the Secretary-General of the United Nations shall convene this Special Meeting of the States Parties within a further 14 days. A quorum for this Meeting shall consist of a majority of States Parties.

6. The Meeting of the States Parties or the Special Meeting of the States Parties, as the case may be, shall first determine whether to consider the matter further, taking into account all information submitted by the States Parties concerned. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach a decision by consensus. If despite all efforts to that end no agreement has been reached, it shall take this decision by a majority of States Parties present and voting.

7. All States Parties shall cooperate fully with the Meeting of the States Parties or the Special Meeting of the States Parties in the fulfilment of its review of the matter, including any fact-finding missions that are authorized in accordance with paragraph 8.

8. If further clarification is required, the Meeting of the States Parties or the Special Meeting of the States Parties shall authorize a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. At any time the requested State Party may invite a fact-finding mission to its territory. Such a mission shall take place without a decision by a Meeting of the States Parties or a Special Meeting of the States Parties to authorize such a mission. The mission, consisting of up to nine experts, designated and approved in accordance with paragraphs 9 and 10, may collect additional information on the spot or in

other places directly related to the alleged compliance issue under the jurisdiction or control of the requested State Party.

9. The Secretary-General of the United Nations shall prepare and update a list of the names, nationalities and other relevant data of qualified experts provided by States Parties and communicate it to all States Parties. Any expert included on this list shall be regarded as designated for all fact-finding missions unless a State Party declares its non-acceptance in writing. In the event of non-acceptance, the expert shall not participate in fact-finding missions on the territory or any other place under the jurisdiction or control of the objecting State Party, if the non-acceptance was declared prior to the appointment of the expert to such missions.

10. Upon receiving a request from the Meeting of the States Parties or a Special Meeting of the States Parties, the Secretary-General of the United Nations shall, after consultations with the requested State Party, appoint the members of the mission, including its leader. Nationals of States Parties requesting the fact-finding mission or directly affected by it shall not be appointed to the mission. The members of the fact-finding mission shall enjoy privileges and immunities under article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946.

11. Upon at least 72 hours' notice, the members of the fact-finding mission shall arrive in the territory of the requested State Party at the earliest opportunity. The requested State Party shall take the necessary administrative measures to receive, transport and accommodate the mission, and shall be responsible for ensuring the security of the mission to the maximum extent possible while they are on territory under its control.

12. Without prejudice to the sovereignty of the requested State Party, the fact-finding mission may bring into the territory of the requested State Party the necessary equipment which shall be used exclusively for gathering information on the alleged compliance issue. Prior to its arrival, the mission will advise the requested State Party of the equipment that it intends to utilize in the course of its fact-finding mission.

13. The requested State Party shall make all efforts to ensure that the fact-finding mission is given the opportunity to speak with all relevant persons who may be able to provide information related to the alleged compliance issue.

14. The requested State Party shall grant access for the fact-finding mission to all areas and installations under its control where facts relevant to the compliance issue could be expected to be collected. This shall be subject to any arrangements that the requested State Party considers necessary for:

- (a) The protection of sensitive equipment, information and areas;
- (b) The protection of any constitutional obligations the requested State Party may have with regard to proprietary rights, searches and seizures, or other constitutional rights; or
- (c) The physical protection and safety of the members of the fact-finding mission.

In the event that the requested State Party makes such arrangements, it shall make every reasonable effort to demonstrate through alternative means its compliance with this Convention.

15. The fact-finding mission may remain in the territory of the State Party concerned for no more than 14 days, and at any particular site no more than seven days, unless otherwise agreed.

16. All information provided in confidence and not related to the subject matter of the fact-finding mission shall be treated on a confidential basis.

17. The fact-finding mission shall report, through the Secretary-General of the United Nations, to the Meeting of the States Parties or the Special Meeting of the States Parties the results of its findings.

18. The Meeting of the States Parties or the Special Meeting of the States Parties shall consider all relevant information, including the report submitted by the fact-finding mission, and may request the requested State Party to take measures to address the compliance issue within a specified period of time. The requested State Party shall report on all measures taken in response to this request.

19. The Meeting of the States Parties or the Special Meeting of the States Parties may suggest to the States Parties concerned ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of the States Parties or the Special Meeting of the States Parties may recommend appropriate measures, including the use of cooperative measures referred to in article 6.

20. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach its decisions referred to in paragraphs 18 and 19 by consensus, otherwise by a two-thirds majority of States Parties present and voting.

### *Article 9*

#### NATIONAL IMPLEMENTATION MEASURES

Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

### *Article 10*

#### SETTLEMENT OF DISPUTES

1. The States Parties shall consult and cooperate with each other to settle any dispute that may arise with regard to the application or the interpretation of this Convention. Each State Party may bring any such dispute before the Meeting of the States Parties.

2. The Meeting of the States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties to a dispute to start the settlement procedure of their choice and recommending a time limit for any agreed procedure.

3. This article is without prejudice to the provisions of this Convention on facilitation and clarification of compliance.



## *Article 11*

### MEETINGS OF THE STATES PARTIES

1. The States Parties shall meet regularly in order to consider any matter with regard to the application or implementation of this Convention, including:

- (a) The operation and status of this Convention;
- (b) Matters arising from the reports submitted under the provisions of this Convention;
- (c) International cooperation and assistance in accordance with article 6;
- (d) The development of technologies to clear anti-personnel mines;
- (e) Submissions of States Parties under article 8; and
- (f) Decisions relating to submissions of States Parties as provided for in article 5.

2. The First Meeting of the States Parties shall be convened by the Secretary-General of the United Nations within one year after the entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.

3. Under the conditions set out in article 8, the Secretary-General of the United Nations shall convene a Special Meeting of the States Parties.

4. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations, may be invited to attend these meetings as observers in accordance with the agreed Rules of Procedure.

## *Article 12*

### REVIEW CONFERENCES

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.

2. The purpose of the Review Conference shall be:

- (a) To review the operation and status of this Convention;
- (b) To consider the need for and the interval between further Meetings of the States Parties referred to in paragraph 2 of article 11;
- (c) To take decisions on submissions of States Parties as provided for in article 5; and
- (d) To adopt, if necessary, in its final report conclusions related to the implementation of this Convention.

3. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental

organizations, may be invited to attend each Review Conference as observers in accordance with the agreed Rules of Procedure.

### *Article 13*

#### AMENDMENTS

1. At any time after the entry into force of this Convention any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the depositary, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the depositary no later than 30 days after its circulation that they support further consideration of the proposal, the depositary shall convene an Amendment Conference to which all States Parties shall be invited.

2. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations, may be invited to attend each Amendment Conference as observers in accordance with the agreed Rules of Procedure.

3. The Amendment Conference shall be held immediately following a Meeting of the States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.

4. Any amendment to this Convention shall be adopted by a majority of two thirds of the States Parties present and voting at the Amendment Conference. The depositary shall communicate any amendment so adopted to the States Parties.

5. An amendment to this Convention shall enter into force for all States Parties to this Convention which have accepted it, upon the deposit with the depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

### *Article 14*

#### COSTS

1. The costs of the Meetings of the States Parties, the Special Meetings of the States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not parties to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.

2. The costs incurred by the Secretary-General of the United Nations under articles 7 and 8 and the costs of any fact-finding mission shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

### *Article 15*

#### SIGNATURE

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December 1997 until 4 December 1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.

### *Article 16*

#### RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Convention is subject to ratification, acceptance or approval of the signatories.

2. It shall be open for accession by any State which has not signed the Convention.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

### *Article 17*

#### ENTRY INTO FORCE

1. This Convention shall enter into force on the first day of the sixth month after the month in which the 40th instrument of ratification, acceptance, approval or accession has been deposited.

2. For any State which deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the 40th instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

### *Article 18*

#### PROVISIONAL APPLICATION

Any State may, at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of article 1 of this Convention pending its entry into force.

### *Article 19*

#### RESERVATIONS

The articles of this Convention shall not be subject to reservations.

### *Article 20*

#### DURATION AND WITHDRAWAL

1. This Convention shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.

3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.

### *Article 21*

#### DEPOSITARY

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

### *Article 22*

#### AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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## 4. KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE.<sup>7</sup> DONE AT KYOTO, JAPAN, 11 DECEMBER 1997<sup>8</sup>

*The Parties to this Protocol,*

*Being parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as "the Convention",*

*In pursuit of the ultimate objective of the Convention as stated in its article 2,*

*Recalling the provisions of the Convention,*

*Being guided by article 3 of the Convention,*

*Pursuant to the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the Parties to the Convention at its first session,*

*Have agreed as follows:*

### *Article 1*

For the purposes of this Protocol, the definitions contained in article 1 of the Convention shall apply. In addition:

1. "Conference of the Parties" means the Conference of the Parties to the Convention.
2. "Convention" means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.
3. "Intergovernmental Panel on Climate Change" means the Intergovernmental Panel on Climate Change established in 1988 jointly by the World Meteorological Organization and the United Nations Environment Programme.
4. "Montreal Protocol" means the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Montreal on 16 September 1987 and as subsequently adjusted and amended.
5. "Parties present and voting" means Parties present and casting an affirmative or negative vote.
6. "Party" means, unless the context otherwise indicates, a Party to this Protocol.
7. "Party included in annex I" means a Party included in annex I to the Convention, as may be amended, or a Party which has made a notification under article 4, paragraph 2 (g), of the Convention.

## *Article 2*

1. Each Party included in annex I, in achieving its quantified emission limitation and reduction commitments under article 3, in order to promote sustainable development, shall:

(a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:

- (i) Enhancement of energy efficiency in relevant sectors of the national economy;
- (ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;
- (iii) Promotion of sustainable forms of agriculture in light of climate change considerations;
- (iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;
- (v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;
- (vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;
- (vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;

(viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;

(b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this article, pursuant to article 4, paragraph 2 (e) (i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.

3. The Parties included in annex I shall strive to implement policies and measures under this article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in article 4, paragraphs 8 and 9, of the Convention, taking into account article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1 (a) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.

### *Article 3*

1. The Parties included in annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in annex B and in accordance with the provisions of this article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

2. Each Party included in annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol

3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this article of each Party included in annex I. The greenhouse gas emissions by sources and removals by sinks associated with

those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with articles 7 and 8.

4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be added to, or subtracted from, the assigned amounts for Parties included in annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on those additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990.

5. The Parties included in annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this article. Any other Party included in annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.

6. Taking into account article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in annex I undergoing the process of transition to a market economy.

7. In the first quantified emission limitation and reduction commitment period, from 2008 to 2012, the assigned amount for each Party included in annex I shall be equal to the percentage inscribed for it in annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by five. Those Parties included in annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

8. Any Party included in annex I may use 1995 as its base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, for the purposes of the calculation referred to in paragraph 7 above.

9. Commitments for subsequent periods for Parties included in annex I shall be established in amendments to annex B to this Protocol, which shall be adopted in accordance with the provisions of article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven years before the end of the first commitment period referred to in paragraph 1 above.

10. Any emission reduction units, or any part of an assigned amount, which a Party acquires from another Party in accordance with the provisions of article 6 or of article 17 shall be added to the assigned amount for the acquiring Party.

11. Any emission reduction units, or any part of an assigned amount, which a Party transfers to another Party in accordance with the provisions of article 6 or of article 17 shall be subtracted from the assigned amount for the transferring Party.

12. Any certified emission reductions which a Party acquires from another Party in accordance with the provisions of article 12 shall be added to the assigned amount for the acquiring Party.

13. If the emissions of a Party included in annex I in a commitment period are less than its assigned amount under this article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment periods.

14. Each Party included in annex I shall strive to implement the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs. Among the issues to be considered shall be the establishment of funding, insurance and transfer of technology.

#### *Article 4*

1. Any Parties included in annex I that have reached an agreement to fulfil their commitments under article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in annex B and in accordance with the provisions of article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.

2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto. The secretariat shall



in turn inform the Parties and signatories to the Convention of the terms of the agreement.

3. Any such agreement shall remain in operation for the duration of the commitment period specified in article 3, paragraph 7.

4. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization, any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol. Any alteration in the composition of the organization shall only apply for the purposes of those commitments under article 3 that are adopted subsequent to that alteration.

5. In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement.

6. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Protocol, each member State of that regional economic integration organization individually, and together with the regional economic integration organization acting in accordance with article 24, shall, in the event of failure to achieve the total combined level of emission reductions, be responsible for its level of emissions as notified in accordance with this article.

#### *Article 5*

1. Each Party included in annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.

2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only for the purposes of ascertaining compliance with commitments under article 3 in respect of any commitment period adopted subsequent to that revision.

3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the

Parties at its third session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under article 3 in respect of any commitment period adopted subsequent to that revision.

#### *Article 6*

1. For the purpose of meeting its commitments under article 3, any Party included in annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:

- (a) Any such project has the approval of the Parties involved;
- (b) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;
- (c) It does not acquire any emission reduction units if it is not in compliance with its obligations under articles 5 and 7; and
- (d) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under article 3.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol may, at its first session or as soon as practicable thereafter, further elaborate guidelines for the implementation of this article, including for verification and reporting.

3. A Party included in annex I may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this article of emission reduction units.

4. If a question of implementation by a Party included in annex I of the requirements referred to in this article is identified in accordance with the relevant provisions of article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that any such units may not be used by a Party to meet its commitments under article 3 until any issue of compliance is resolved.

#### *Article 7*

1. Each Party included in annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with article 3, to be determined in accordance with paragraph 4 below.

2. Each Party included in annex I shall incorporate in its national communication, submitted under article 12 of the Convention, the supplementary infor-

mation necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.

3. Each Party included in annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this article, taking into account guidelines for the preparation of national communications by Parties included in annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts.

#### *Article 8*

1. The information submitted under article 7 by each Party included in annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under article 7, paragraph 1, by each Party included in annex I shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under article 7, paragraph 2, by each Party included in annex I shall be reviewed as part of the review of communications.

2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.

3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter,

guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, with the assistance of the Subsidiary Body for Implementation and, as appropriate, the Subsidiary Body for Scientific and Technological Advice, consider:

(a) The information submitted by Parties under article 7 and the reports of the expert reviews thereon conducted under this article; and

(b) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.

6. Pursuant to its consideration of the information referred to in paragraph 5 above, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take decisions on any matter required for the implementation of this Protocol.

#### *Article 9*

1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information. Such reviews shall be coordinated with pertinent reviews under the Convention, in particular those required by article 4, paragraph 2 (d), and article 7, paragraph 2 (a), of the Convention. Based on these reviews, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take appropriate action.

2. The first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner.

#### *Article 10*

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in annex I, but reaffirming existing commitments under article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account article 4, paragraphs 3, 5 and 7, of the Convention, shall:

(a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:

- (i) Such programmes would, inter alia, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and
- (ii) Parties included in annex I shall submit information on action under this Protocol, including national programmes, in accordance with article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity-building and adaptation measures;

(c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;

(d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account article 5 of the Convention;

(e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity-building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account article 6 of the Convention;

(f) Include in their national communications information on programmes and activities undertaken pursuant to this article in accordance with relevant decisions of the Conference of the Parties; and

(g) Give full consideration, in implementing the commitments under this article, to article 4, paragraph 8, of the Convention.

### *Article 11*

1. In the implementation of article 10, Parties shall take into account the provisions of article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.

2. In the context of the implementation of article 4, paragraph 1, of the Convention, in accordance with the provisions of article 4, paragraph 3, and article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in annex II to the Convention shall:

(a) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under article 4, paragraph 1 (a), of the Convention that are covered in article 10, subparagraph (a); and

(b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments under article 4, paragraph 1, of the Convention that are covered by article 10 and that are agreed between a developing country Party and the international entity or entities referred to in article 11 of the Convention, in accordance with that article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply *mutatis mutandis* to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of article 10, through bilateral, regional and other multilateral channels.

### *Article 12*

1. A clean development mechanism is hereby defined.

2. The purpose of the clean development mechanism shall be to assist Parties not included in annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in annex I in achieving compliance with their quantified emission limitation and reduction commitments under article 3.

3. Under the clean development mechanism:

(a) Parties not included in annex I will benefit from project activities resulting in certified emission reductions; and

(b) Parties included in annex I may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The clean development mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to

this Protocol and be supervised by an executive board of the clean development mechanism.

5. Emission reductions resulting from each project activity shall be certified by operational entities to be designated by the Conference of the Parties serving as the meeting of the Parties to this Protocol, on the basis of:

- (a) Voluntary participation approved by each Party involved;
- (b) Real, measurable, and long-term benefits related to the mitigation of climate change; and
- (c) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.

6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.

7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.

8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

9. Participation under the clean development mechanism, including in activities mentioned in paragraph 3 (a) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.

10. Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

### *Article 13*

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effec-

tive implementation. It shall perform the functions assigned to it by this Protocol and shall:

(a) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts, and the extent to which progress towards the objective of the Convention is being achieved;

(b) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by article 4, paragraph 2 (d), and article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge, and in this respect consider and adopt regular reports on the implementation of this Protocol;

(c) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(d) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(e) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;

(f) Make recommendations on any matters necessary for the implementation of this Protocol;

(g) Seek to mobilize additional financial resources in accordance with article 11, paragraph 2;

(h) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(i) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and inter-governmental and non-governmental bodies; and

(j) Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.

5. The rules of procedure of the Conference of the Parties and financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the



Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Protocol as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

#### *Article 14*

1. The secretariat established by article 8 of the Convention shall serve as the secretariat of this Protocol.

2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

#### *Article 15*

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by articles 9 and 10 of the Convention shall serve as, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol. The provisions relating to the functioning of these two bodies under the Convention shall apply *mutatis mutandis* to this Protocol. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the subsidiary bodies established by articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Protocol, any member of the Bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

#### *Article 16*

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, as soon as practicable, consider the application to this Protocol of, and modify as appropriate, the multilateral consultative process referred to in article 13 of the Convention, in the light of any relevant decisions that may be taken by the Conference of the Parties. Any multilateral consultative process that may be applied to this Protocol shall operate without prejudice to the procedures and mechanisms established in accordance with article 18.

#### *Article 17*

The Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading. The Parties included in annex B may participate in emissions trading for the purposes of fulfilling their commitments under article 3. Any such trading shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under that article.

#### *Article 18*

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

#### *Article 19*

The provisions of article 14 of the Convention on settlement of disputes shall apply mutatis mutandis to this Protocol.

#### *Article 20*

1. Any Party may propose amendments to this Protocol.

2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any pro-

posed amendments to the Parties and signatories to the Convention and, for information, to the depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the depositary, who shall circulate it to all Parties for their acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the depositary its instrument of acceptance of the said amendment.

### *Article 21*

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.

3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the depositary.

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex other than annex A or B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into

force for Parties which withdraw their notification of non-acceptance on the ninetyeth day after the date on which withdrawal of such notification has been received by the depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.

7. Amendments to annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in article 20, provided that any amendment to annex B shall be adopted only with the written consent of the Party concerned.

#### *Article 22*

1. Each Party shall have one vote, except as provided for in paragraph 2 below.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

#### *Article 23*

The Secretary-General of the United Nations shall be the depositary of this Protocol.

#### *Article 24*

1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

2. Any regional economic integration organization which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. In the case of such organizations, one or more of whose member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

### *Article 25*

1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in annex I, have deposited their instruments of ratification, acceptance, approval or accession.

2. For the purposes of this article, "the total carbon dioxide emissions for 1990 of the Parties included in annex I" means the amount communicated on or before the date of adoption of this Protocol by the Parties included in annex I in their first national communications submitted in accordance with article 12 of the Convention.

3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

### *Article 26*

No reservations may be made to this Protocol.

### *Article 27*

1. At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol.

### *Article 28*

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Kyoto this eleventh day of December one thousand nine hundred and ninety-seven.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have affixed their signatures to this Protocol on the dates indicated.

## ANNEX A

### *Greenhouse gases*

Carbon dioxide (CO<sub>2</sub>)  
Methane (CH<sub>4</sub>)  
Nitrous oxide (N<sub>2</sub>O)  
Hydrofluorocarbons (HFCs)  
Perfluorocarbons (PFCs)  
Sulphur hexafluoride (SF<sub>6</sub>)

### *Sectors /source categories*

#### Energy

Fuel combustion  
  Energy industries  
  Manufacturing industries and construction  
  Transport  
  Other sectors  
  Other  
Fugitive emissions from fuels  
  Solid fuels  
  Oil and natural gas  
  Other

#### Industrial processes

Mineral products  
Chemical industry  
Metal production  
Other production  
Production of halocarbons and sulphur hexafluoride  
Consumption of halocarbons and sulphur hexafluoride  
Other

#### Solvent and other product use

#### Agriculture

Enteric fermentation  
Manure management  
Rice cultivation  
Agricultural soils  
Prescribed burning of savannas  
Field burning of agricultural residues  
Other

#### Waste

Solid waste disposal on land  
Wastewater handling  
Waste incineration  
Other

## ANNEX B

<i>Party</i>	<i>Quantified emission limitation or reduction commitment (percentage of base year or period)</i>
Australia . . . . .	108
Austria . . . . .	92
Belgium . . . . .	92
Bulgaria* . . . . .	92
Canada . . . . .	94

\*Countries that are undergoing the process of transition to a market economy.

<i>Party</i>	<i>Quantified emission limitation or reduction commitment (percentage of base year or period)</i>
Croatia*	95
Czech Republic*	92
Denmark	92
Estonia*	92
European Community	92
Finland	92
France	92
Germany	92
Greece	92
Hungary*	94
Iceland	110
Ireland	92
Italy	92
Japan	94
Latvia*	92
Liechtenstein	92
Lithuania*	92
Luxembourg	92
Monaco	92
Netherlands	92
New Zealand	100
Norway	101
Poland*	94
Portugal	92
Romania*	92
Russian Federation*	100
Slovakia*	92
Slovenia*	92
Spain	92
Sweden	92
Switzerland	92
Ukraine*	100
United Kingdom of Great Britain and Northern Ireland	92
United States of America	93

## 5. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS.<sup>9</sup> DONE AT NEW YORK, 15 DECEMBER 1997<sup>10</sup>

*The States Parties to this Convention,*

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

*Deeply concerned* about the worldwide escalation of acts of terrorism in all its forms and manifestations,

*Recalling* the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

*Recalling also* the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, “the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States”,

*Noting* that the Declaration also encouraged States “to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter”,

*Recalling further* General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto,

*Noting also* that terrorist attacks by means of explosives or other lethal devices have become increasingly widespread,

*Noting further* that existing multilateral legal provisions do not adequately address these attacks,

*Being convinced* of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators,

*Considering* that the occurrence of such acts is a matter of grave concern to the international community as a whole,

*Noting* that the activities of military forces of States are governed by rules of international law outside the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

*Have agreed* as follows:

#### *Article 1*

For the purposes of this Convention:

1. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
2. “Infrastructure facility” means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications.
3. “Explosive or other lethal device” means:



(a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or

(b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.

4. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.

5. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

6. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

## *Article 2*

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

### *Article 3*

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 6, paragraph 1, or article 6, paragraph 2, of this Convention to exercise jurisdiction, except that the provisions of articles 10 to 15 shall, as appropriate, apply in those cases.

### *Article 4*

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2 of this Convention;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

### *Article 5*

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

### *Article 6*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State; or
- (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
- (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
- (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
- (e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

### *Article 7*

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) Be visited by a representative of that State;

(c) Be informed of that person's rights under subparagraphs (a) and (b).

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

### *Article 8*

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

### *Article 9*

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

### *Article 10*

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

### *Article 11*

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

### *Article 12*

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

### *Article 13*

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of this article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for time spent in the custody of the State to which he was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

#### *Article 14*

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

#### *Article 15*

States Parties shall cooperate in the prevention of the offences set forth in article 2, particularly:

(a) By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the perpetration of offences as set forth in article 2;

(b) By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2;

(c) Where appropriate, through research and development regarding methods of detection of explosives and other harmful substances that can cause death or bodily injury, consultations on the development of standards for marking explosives in order to identify their origin in post-blast investigations, exchange of information on preventive measures, cooperation and transfer of technology, equipment and related materials.

#### *Article 16*

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

#### *Article 17*

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

### *Article 18*

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

### *Article 19*

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

### *Article 20*

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

### *Article 21*

1. This Convention shall be open for signature by all States from 12 January 1998 until 31 December 1999 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

## *Article 22*

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

## *Article 23*

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

## *Article 24*

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 12 January 1998.

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## **B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations**

### **1. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS**

International Plant Protection Convention. Approved by the  
FAO Conference at its 29th session, November 1997<sup>11</sup>

## **PREAMBLE**

*The contracting parties,*

*Recognizing the necessity for international cooperation in controlling pests of plants and plant products and in preventing their international spread, and especially their introduction into endangered areas;*



*Recognizing* that phytosanitary measures should be technically justified, transparent and should not be applied in such a way as to constitute either a means of arbitrary or unjustified discrimination or a disguised restriction, particularly on international trade;

*Desiring* to ensure close coordination of measures directed to these ends;

*Desiring* to provide a framework for the development and application of harmonized phytosanitary measures and the elaboration of international standards to that effect;

*Taking into account* internationally approved principles governing the protection of plant, human and animal health, and the environment; and

*Noting* the agreements concluded as a result of the Uruguay Round of Multilateral Trade Negotiations, including the Agreement on the Application of Sanitary and Phytosanitary Measures;

*Have agreed* as follows:

## *Article I*

### PURPOSE AND RESPONSIBILITY

1. With the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control, the contracting parties undertake to adopt the legislative, technical and administrative measures specified in this Convention and in supplementary agreements pursuant to article XVI.

2. Each contracting party shall assume responsibility, without prejudice to obligations assumed under other international agreements, for the fulfilment within its territories of all requirements under this Convention.

3. The division of responsibilities for the fulfilment of the requirements of this Convention between member organizations of FAO and their member States that are contracting parties shall be in accordance with their respective competencies.

4. Where appropriate, the provisions of this Convention may be deemed by contracting parties to extend, in addition to plants and plant products, to storage places, packaging, conveyances, containers, soil and any other organism, object or material capable of harbouring or spreading plant pests, particularly where international transportation is involved.

## *Article II*

### USE OF TERMS

1. For the purpose of this Convention, the following terms shall have the meanings hereunder assigned to them:

“Area of low pest prevalence”—an area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

- “Commission”—the Commission on Phytosanitary Measures established under article XI;
- “Endangered area”—an area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss;
- “Establishment”—perpetuation, for the foreseeable future, of a pest within an area after entry;
- “Harmonized phytosanitary measures”—phytosanitary measures established by contracting parties based on international standards;
- “International standards”—international standards established in accordance with article X, paragraphs 1 and 2;
- “Introduction”—the entry of a pest resulting in its establishment;
- “Pest”—any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;
- “Pest risk analysis”—the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;
- “Phytosanitary measure”—any legislation, regulation or official procedure having the purpose to prevent the introduction and/or spread of pests;
- “Plant products”—unmanufactured material of plant origin (including grain) and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests;
- “Plants”—living plants and parts thereof, including seeds and germ plasm;
- “Quarantine pest”—a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled;
- “Regional standards”—standards established by a regional plant protection organization for the guidance of the members of that organization;
- “Regulated article”—any plant, plant product, storage place, packaging, conveyance, container, soil and any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved;
- “Regulated non-quarantine pest”—a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contracting party;
- “Regulated pest”—a quarantine pest or a regulated non-quarantine pest;
- “Secretary”—Secretary of the Commission appointed pursuant to article XII;
- “Technically justified”—justified on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information.

2. The definitions set forth in this article, being limited to the application of this Convention, shall not be deemed to affect definitions established under domestic laws or regulations of contracting parties.

### *Article III*

#### RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS

Nothing in this Convention shall affect the rights and obligations of the contracting parties under relevant international agreements.

### *Article IV*

#### GENERAL PROVISIONS RELATING TO THE ORGANIZATIONAL ARRANGEMENTS FOR NATIONAL PLANT PROTECTION

1. Each contracting party shall make provision, to the best of its ability, for an official national plant protection organization with the main responsibilities set out in this article.

2. The responsibilities of an official national plant protection organization shall include the following:

(a) The issuance of certificates relating to the phytosanitary regulations of the importing contracting party for consignments of plants, plant products and other regulated articles;

(b) The surveillance of growing plants, including both areas under cultivation (inter alia fields, plantations, nurseries, gardens, greenhouses and laboratories) and wild flora, and of plants and plant products in storage or in transportation, particularly with the object of reporting the occurrence, outbreak and spread of pests, and of controlling those pests, including the reporting referred to under article VIII, paragraph 1(a);

(c) The inspection of consignments of plants and plant products moving in international traffic and, where appropriate, the inspection of other regulated articles, particularly with the object of preventing the introduction and/or spread of pests;

(d) The disinfestation or disinfection of consignments of plants, plant products and other regulated articles moving in international traffic, to meet phytosanitary requirements;

(e) The protection of endangered areas and the designation, maintenance and surveillance of pest-free areas and areas of low pest prevalence;

(f) The conduct of pest risk analyses;

(g) To ensure through appropriate procedures that the phytosanitary security of consignments after certification regarding composition, substitution and reinfestation is maintained prior to export; and

(h) Training and development of staff.

3. Each contracting party shall make provision, to the best of its ability, for the following:

(a) The distribution of information within the territory of the contracting party regarding regulated pests and the means of their prevention and control;

- (b) Research and investigation in the field of plant protection;
- (c) The issuance of phytosanitary regulations; and
- (d) The performance of such other functions as may be required for the implementation of this Convention.

4. Each contracting party shall submit a description of its official national plant protection organization and of changes in such organization to the Secretary. A contracting party shall provide a description of its organizational arrangements for plant protection to another contracting party, upon request.

### *Article V*

#### PHYTOSANITARY CERTIFICATION

1. Each contracting party shall make arrangements for phytosanitary certification, with the objective of ensuring that exported plants, plant products and other regulated articles and consignments thereof are in conformity with the certifying statement to be made pursuant to paragraph 2(b) of this article.

2. Each contracting party shall make arrangements for the issuance of phytosanitary certificates in conformity with the following provisions:

(a) Inspection and other related activities leading to issuance of phytosanitary certificates shall be carried out only by or under the authority of the official national plant protection organization. The issuance of phytosanitary certificates shall be carried out by public officers who are technically qualified and duly authorized by the official national plant protection organization to act on its behalf and under its control with such knowledge and information available to those officers that the authorities of importing contracting parties may accept the phytosanitary certificates with confidence as dependable documents;

(b) Phytosanitary certificates, or their electronic equivalent where accepted by the importing contracting party concerned, shall be as worded in the models set out in the annex to this Convention. These certificates should be completed and issued taking into account relevant international standards;

(c) Uncertified alterations or erasures shall invalidate the certificates.

3. Each contracting party undertakes not to require consignments of plants or plant products or other regulated articles imported into its territories to be accompanied by phytosanitary certificates inconsistent with the models set out in the annex to this Convention. Any requirements for additional declarations shall be limited to those technically justified.

### *Article VI*

#### REGULATED PESTS

1. Contracting parties may require phytosanitary measures for quarantine pests and regulated non-quarantine pests, provided that such measures are:

(a) No more stringent than measures applied to the same pests, if present within the territory of the importing contracting party; and

(b) Limited to what is necessary to protect plant health and/or safeguard the intended use and can be technically justified by the contracting party concerned.

2. Contracting parties shall not require phytosanitary measures for non-regulated pests.

## *Article VII*

### REQUIREMENTS IN RELATION TO IMPORTS

1. With the aim of preventing the introduction and/or spread of regulated pests into their territories, contracting parties shall have sovereign authority to regulate, in accordance with applicable international agreements, the entry of plants and plant products and other regulated articles and, to this end, may:

(a) Prescribe and adopt phytosanitary measures concerning the importation of plants, plant products and other regulated articles, including, for example, inspection, prohibition on importation, and treatment;

(b) Refuse entry or detain, or require treatment, destruction or removal from the territory of the contracting party, of plants, plant products and other regulated articles or consignments thereof that do not comply with the phytosanitary measures prescribed or adopted under subparagraph (a);

(c) Prohibit or restrict the movement of regulated pests into their territories;

(d) Prohibit or restrict the movement of biological control agents and other organisms of phytosanitary concern claimed to be beneficial into their territories.

2. In order to minimize interference with international trade, each contracting party, in exercising its authority under paragraph 1 of this article, undertakes to act in conformity with the following:

(a) Contracting parties shall not, under their phytosanitary legislation, take any of the measures specified in paragraph 1 of this article unless such measures are made necessary by phytosanitary considerations and are technically justified;

(b) Contracting parties shall, immediately upon their adoption, publish and transmit phytosanitary requirements, restrictions and prohibitions to any contracting party or parties that they believe may be directly affected by such measures;

(c) Contracting parties shall, on request, make available to any contracting party the rationale for phytosanitary requirements, restrictions and prohibitions;

(d) If a contracting party requires consignments of particular plants or plant products to be imported only through specified points of entry, such points shall be so selected as not to unnecessarily impede international trade. The contracting party shall publish a list of such points of entry and communicate it to the Secretary, any regional plant protection organization of which the contracting party is a member, all contracting parties which the contracting party believes to be directly affected, and other contracting parties upon request. Such restrictions on points of entry shall not be made unless the plants, plant products or other regulated articles concerned are required to be accompanied by phytosanitary certificates or to be submitted to inspection or treatment;

(e) Any inspection or other phytosanitary procedure required by the plant protection organization of a contracting party for a consignment of plants, plant products or other regulated articles offered for importation, shall take place as promptly as possible with due regard to their perishability;

(f) Importing contracting parties shall, as soon as possible, inform the exporting contracting party concerned, or, where appropriate, the re-exporting contracting party concerned, of significant instances of non-compliance with phytosanitary certification. The exporting contracting party, or, where appropriate, the re-exporting contracting party concerned, should investigate and, on request, report the result of its investigation to the importing contracting party concerned;

(g) Contracting parties shall institute only phytosanitary measures that are technically justified, consistent with the pest risk involved and represent the least restrictive measures available, and result in the minimum impediment to the international movement of people, commodities and conveyances;

(h) Contracting parties shall, as conditions change, and as new facts become available, ensure that phytosanitary measures are promptly modified or removed if found to be unnecessary;

(i) Contracting parties shall, to the best of their ability, establish and update lists of regulated pests, using scientific names, and make such lists available to the Secretary, to regional plant protection organizations of which they are members and, on request, to other contracting parties;

(j) Contracting parties shall, to the best of their ability, conduct surveillance for pests and develop and maintain adequate information on pest status in order to support categorization of pests, and for the development of appropriate phytosanitary measures. This information shall be made available to contracting parties, on request.

3. A contracting party may apply measures specified in this article to pests which may not be capable of establishment in its territories but, if they gained entry, cause economic damage. Measures taken against these pests must be technically justified.

4. Contracting parties may apply measures specified in this article to consignments in transit through their territories only where such measures are technically justified and necessary to prevent the introduction and/or spread of pests.

5. Nothing in this article shall prevent importing contracting parties from making special provision, subject to adequate safeguards, for the importation, for the purpose of scientific research, education, or other specific use, of plants and plant products and other regulated articles, and of plant pests.

6. Nothing in this article shall prevent any contracting party from taking appropriate emergency action on the detection of a pest posing a potential threat to its territories or the report of such a detection. Any such action shall be evaluated as soon as possible to ensure that its continuance is justified. The action taken shall be immediately reported to contracting parties concerned, the Secretary, and any regional plant protection organization of which the contracting party is a member.

### *Article VIII*

#### INTERNATIONAL COOPERATION

1. The contracting parties shall cooperate with one another to the fullest practicable extent in achieving the aims of this Convention, and shall in particular:

(a) Cooperate in the exchange of information on plant pests, particularly the reporting of the occurrence, outbreak or spread of pests that may be of immediate or potential danger, in accordance with such procedures as may be established by the Commission;

(b) Participate, insofar as is practicable, in any special campaigns for combating pests that may seriously threaten crop production and need international action to meet the emergencies; and

(c) Cooperate, to the extent practicable, in providing technical and biological information necessary for pest risk analysis.

2. Each contracting party shall designate a contact point for the exchange of information connected with the implementation of this Convention.

### *Article IX*

#### REGIONAL PLANT PROTECTION ORGANIZATIONS

1. The contracting parties undertake to cooperate with one another in establishing regional plant protection organizations in appropriate areas.

2. The regional plant protection organizations shall function as the coordinating bodies in the areas covered, shall participate in various activities to achieve the objectives of this Convention and, where appropriate, shall gather and disseminate information.

3. The regional plant protection organizations shall cooperate with the Secretary in achieving the objectives of the Convention and, where appropriate, cooperate with the Secretary and the Commission in developing international standards.

4. The Secretary will convene regular Technical Consultations of representatives of regional plant protection organizations to:

(a) Promote the development and use of relevant international standards for phytosanitary measures; and

(b) Encourage interregional cooperation in promoting harmonized phytosanitary measures for controlling pests and in preventing their spread and/or introduction.

### *Article X*

#### STANDARDS

1. The contracting parties agree to cooperate in the development of international standards in accordance with the procedures adopted by the Commission.

2. International standards shall be adopted by the Commission.

3. Regional standards should be consistent with the principles of this Convention; such standards may be deposited with the Commission for consideration as candidates for international standards for phytosanitary measures if more broadly applicable.

4. Contracting parties should take into account, as appropriate, international standards when undertaking activities related to this Convention.

## *Article XI*

### COMMISSION ON PHYTOSANITARY MEASURES

1. Contracting parties agree to establish the Commission on Phytosanitary Measures within the framework of the Food and Agriculture Organization of the United Nations (FAO).

2. The functions of the Commission shall be to promote the full implementation of the objectives of the Convention and, in particular, to:

(a) Review the state of plant protection in the world and the need for action to control the international spread of pests and their introduction into endangered areas;

(b) Establish and keep under review the necessary institutional arrangements and procedures for the development and adoption of international standards, and to adopt international standards;

(c) Establish rules and procedures for the resolution of disputes in accordance with article XIII;

(d) Establish such subsidiary bodies of the Commission as may be necessary for the proper implementation of its functions;

(e) Adopt guidelines regarding the recognition of regional plant protection organizations;

(f) Establish cooperation with other relevant international organizations on matters covered by this Convention;

(g) Adopt such recommendations for the implementation of the Convention as necessary; and

(h) Perform such other functions as may be necessary to the fulfilment of the objectives of this Convention.

3. Membership in the Commission shall be open to all contracting parties.

4. Each contracting party may be represented at sessions of the Commission by a single delegate who may be accompanied by an alternate, and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote, except in the case of an alternate who is duly authorized to substitute for the delegate.

5. The contracting parties shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision shall, as a last resort, be taken by a two-thirds majority of the contracting parties present and voting.

6. A member organization of FAO that is a contracting party and the member States of that member organization that are contracting parties shall exercise their membership rights and fulfil their membership obligations in accordance, *mutatis mutandis*, with the Constitution and General Rules of FAO.

7. The Commission may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Convention or with the Constitution of FAO.

8. The Chairperson of the Commission shall convene an annual regular session of the Commission.



9. Special sessions of the Commission shall be convened by the Chairperson of the Commission at the request of at least one third of its members.

10. The Commission shall elect its Chairperson and no more than two Vice-Chairpersons, each of whom shall serve for a term of two years.

## *Article XII*

### SECRETARIAT

1. The Secretary of the Commission shall be appointed by the Director-General of FAO.

2. The Secretary shall be assisted by such secretariat staff as may be required.

3. The Secretary shall be responsible for implementing the policies and activities of the Commission and carrying out such other functions as may be assigned to the Secretary by this Convention and shall report thereon to the Commission.

4. The Secretary shall disseminate:

(a) International standards to all contracting parties within sixty days of adoption;

(b) To all contracting parties, lists of points of entry under article VII, paragraph 2(d), communicated by contracting parties;

(c) Lists of regulated pests whose entry is prohibited or referred to in article VII, paragraph 2(i), to all contracting parties and regional plant protection organizations;

(d) Information received from contracting parties on phytosanitary requirements, restrictions and prohibitions referred to in article VII, paragraph 2(b), and descriptions of official national plant protection organizations referred to in article IV, paragraph 4.

5. The Secretary shall provide translations in the official languages of FAO of documentation for meetings of the Commission and international standards.

6. The Secretary shall cooperate with regional plant protection organizations in achieving the aims of the Convention.

## *Article XIII*

### SETTLEMENT OF DISPUTES

1. If there is any dispute regarding the interpretation or application of this Convention, or if a contracting party considers that any action by another contracting party is in conflict with the obligations of the latter under articles V and VII of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants, plant products or other regulated articles coming from its territories, the contracting parties concerned shall consult among themselves as soon as possible with a view to resolving the dispute.

2. If the dispute cannot be resolved by the means referred to in paragraph 1, the contracting party or parties concerned may request the Director-General of

FAO to appoint a committee of experts to consider the question in dispute, in accordance with rules and procedures that may be established by the Commission.

3. This Committee shall include representatives designated by each contracting party concerned. The Committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the contracting parties concerned. The Committee shall prepare a report on the technical aspects of the dispute for the purpose of seeking its resolution. The preparation of the report and its approval shall be according to rules and procedures established by the Commission, and it shall be transmitted by the Director-General to the contracting parties concerned. The report may also be submitted, upon its request, to the competent body of the international organization responsible for resolving trade disputes.

4. The contracting parties agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the contracting parties concerned of the matter out of which the disagreement arose.

5. The contracting parties concerned shall share the expenses of the experts.

6. The provisions of this article shall be complementary to and not in derogation of the dispute settlement procedures provided for in other international agreements dealing with trade matters.

#### *Article XIV*

##### SUBSTITUTION OF PRIOR AGREEMENTS

This Convention shall terminate and replace, between contracting parties, the International Convention respecting measures to be taken against the *Phylloxera vastatrix* of 3 November 1881, the additional Convention signed at Berne on 15 April 1889 and the International Convention for the Protection of Plants signed at Rome on 16 April 1929.

#### *Article XV*

##### TERRITORIAL APPLICATION

1. Any contracting party may at the time of ratification or adherence or at any time thereafter communicate to the Director-General of FAO a declaration that this Convention shall extend to all or any of the territories for the international relations of which it is responsible, and this Convention shall be applicable to all territories specified in the declaration as from the thirtieth day after the receipt of the declaration by the Director-General.

2. Any contracting party which has communicated to the Director-General of FAO a declaration in accordance with paragraph 1 of this article may at any time communicate a further declaration modifying the scope of any former declaration or terminating the application of the provisions of the present Convention in respect of any territory. Such modification or termination shall take effect as from the thirtieth day after the receipt of the declaration by the Director-General.

3. The Director-General of FAO shall inform all contracting parties of any declaration received under this article.

## *Article XVI*

### SUPPLEMENTARY AGREEMENTS

1. The contracting parties may, for the purpose of meeting special problems of plant protection which need particular attention or action, enter into supplementary agreements. Such agreements may be applicable to specific regions, to specific pests, to specific plants and plant products, to specific methods of international transportation of plants and plant products, or otherwise supplement the provisions of this Convention.

2. Any such supplementary agreements shall come into force for each contracting party concerned after acceptance in accordance with the provisions of the supplementary agreements concerned.

3. Supplementary agreements shall promote the intent of this Convention and shall conform to the principles and provisions of this Convention, as well as to the principles of transparency, non-discrimination and the avoidance of disguised restrictions, particularly on international trade.

## *Article XVII*

### RATIFICATION AND ADHERENCE

1. This Convention shall be open for signature by all States until 1 May 1952 and shall be ratified at the earliest possible date. The instruments of ratification shall be deposited with the Director-General of FAO, who shall give notice of the date of deposit to each of the signatory States.

2. As soon as this Convention has come into force in accordance with article XXII it shall be open for adherence by non-signatory States and member organizations of FAO. Adherence shall be effected by the deposit of an instrument of adherence with the Director-General of FAO, who shall notify all contracting parties.

3. When a member organization of FAO becomes a contracting party to this Convention, the member organization shall, in accordance with the provisions of article II, paragraph 7, of the FAO Constitution, as appropriate, notify at the time of its adherence such modifications or clarifications to its declaration of competence submitted under article II, paragraph 5, of the FAO Constitution as may be necessary in light of its acceptance of this Convention. Any contracting party to this Convention may, at any time, request a member organization of FAO that is a contracting party to this Convention to provide information as to which, as between the member organization and its member States, is responsible for the implementation of any particular matter covered by this Convention. The member organization shall provide this information within a reasonable time.

## *Article XVIII*

### NON-CONTRACTING PARTIES

The contracting parties shall encourage any State or member organization of FAO, not a party to this Convention, to accept this Convention, and shall encourage any non-contracting party to apply phytosanitary measures consistent with

the provisions of this Convention and any international standards adopted hereunder.

### *Article XIX*

#### LANGUAGES

1. The authentic languages of this Convention shall be all official languages of FAO.

2. Nothing in this Convention shall be construed as requiring contracting parties to provide and to publish documents or to provide copies of them other than in the language(s) of the contracting party, except as stated in paragraph 3 below.

3. The following documents shall be in at least one of the official languages of FAO:

- (a) Information provided according to article IV, paragraph 4;
- (b) Cover notes giving bibliographical data on documents transmitted according to article VII, paragraph 2(b);
- (c) Information provided according to article VII, paragraph 2(b), (d), (i) and (j);
- (d) Notes giving bibliographical data and a short summary of relevant documents on information provided according to article VIII, paragraph 1(a);
- (e) Requests for information from contact points as well as replies to such requests, but not including any attached documents;
- (f) Any document made available by contracting parties for meetings of the Commission.

### *Article XX*

#### TECHNICAL ASSISTANCE

The contracting parties agree to promote the provision of technical assistance to contracting parties, especially those that are developing contracting parties, either bilaterally or through the appropriate international organizations, with the objective of facilitating the implementation of this Convention.

### *Article XXI*

#### AMENDMENT

1. Any proposal by a contracting party for the amendment of this Convention shall be communicated to the Director-General of FAO.

2. Any proposed amendment of this Convention received by the Director-General of FAO from a contracting party shall be presented to a regular or special session of the Commission for approval and, if the amendment involves important technical changes or imposes additional obligations on the contracting parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Commission.

3. Notice of any proposed amendment of this Convention, other than amendments to the annex, shall be transmitted to the contracting parties by the Director-General of FAO not later than the time when the agenda of the session of the Commission at which the matter is to be considered is dispatched.

4. Any such proposed amendment of this Convention shall require the approval of the Commission and shall come into force as from the thirtieth day after acceptance by two thirds of the contracting parties. For the purpose of this article, an instrument deposited by a member organization of FAO shall not be counted as additional to those deposited by member States of such an organization.

5. Amendments involving new obligations for contracting parties, however, shall come into force in respect of each contracting party only on acceptance by it and as from the thirtieth day after such acceptance. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of FAO, who shall inform all contracting parties of the receipt of acceptance and the entry into force of amendments.

6. Proposals for amendments to the model phytosanitary certificates set out in the annex to this Convention shall be sent to the Secretary and shall be considered for approval by the Commission. Approved amendments to the model phytosanitary certificates set out in the annex to this Convention shall become effective ninety days after their notification to the contracting parties by the Secretary.

7. For a period of not more than twelve months from an amendment to the model phytosanitary certificates set out in the annex to this Convention becoming effective, the previous version of the phytosanitary certificates shall also be legally valid for the purpose of this Convention.

### *Article XXII*

#### ENTRY INTO FORCE

As soon as this Convention has been ratified by three signatory States it shall come into force among them. It shall come into force for each State or member organization of FAO ratifying or adhering thereafter from the date of deposit of its instrument of ratification or adherence.

### *Article XXIII*

#### DENUNCIATION

1. Any contracting party may at any time give notice of denunciation of this Convention by notification addressed to the Director-General of FAO. The Director-General shall at once inform all contracting parties.

2. Denunciation shall take effect one year from the date of receipt of the notification by the Director-General of FAO.

## 2. INTERNATIONAL MARITIME ORGANIZATION

Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto.<sup>12</sup> Done at London on 26 September 1997<sup>13</sup>

*The Parties to the present Protocol,*

*Being Parties to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973,*

*Recognizing the need to prevent and control air pollution from ships,*

*Recalling principle 15 of the Rio Declaration on Environment and Development, which calls for the application of a precautionary approach,*

*Considering that this objective could best be achieved by the conclusion of a Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto,*

*Have agreed as follows:*

### *Article 1*

#### INSTRUMENT TO BE AMENDED

The instrument which the present Protocol amends is the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (hereinafter referred to as the "Convention").

### *Article 2*

#### ADDITION OF ANNEX VI TO THE CONVENTION

Annex VI, entitled "Regulations for the Prevention of Air Pollution from Ships", the text of which is set out in the annex to the present Protocol, is added.

### *Article 3*

#### GENERAL OBLIGATIONS

1. The Convention and the present Protocol shall, as between the Parties to the present Protocol, be read and interpreted together as one single instrument.

2. Every reference to the present Protocol constitutes at the same time a reference to the annex hereto.

### *Article 4*

#### AMENDMENT PROCEDURE

In applying article 16 of the Convention to an amendment to annex VI and its appendices, the reference to "a Party to the Convention" shall be deemed to mean the reference to a Party bound by that annex.

## FINAL CLAUSES

### *Article 5*

#### SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. The present Protocol shall be open for signature at the headquarters of the International Maritime Organization (hereinafter referred to as the "Organization") from 1 January 1998 until 31 December 1998 and shall thereafter remain open for accession. Only Contracting States to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (hereinafter referred to as the "1978 Protocol") may become Parties to the present Protocol by:

(a) Signature without reservation as to ratification, acceptance or approval; or

(b) Signature, subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) Accession.

2. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization (hereinafter referred to as the "Secretary-General").

### *Article 6*

#### ENTRY INTO FORCE

1. The present Protocol shall enter into force twelve months after the date on which not less than fifteen States, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant shipping, have become Parties to it in accordance with article 5 of the present Protocol.

2. Any instrument of ratification, acceptance, approval or accession deposited after the date on which the present Protocol enters into force shall take effect three months after the date of deposit.

3. After the date on which an amendment to the present Protocol is deemed to have been accepted in accordance with article 16 of the Convention, any instrument of ratification, acceptance, approval or accession deposited shall apply to the present Protocol as amended.

### *Article 7*

#### DENUNCIATION

1. The present Protocol may be denounced by any Party to the present Protocol at any time after the expiry of five years from the date on which the Protocol enters into force for that 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 after receipt of the notification by the Secretary-General or after the expiry of any other longer period which may be indicated in the notification.

4. A denunciation of the 1978 Protocol in accordance with article VII thereof shall be deemed to include a denunciation of the present Protocol in accordance with this article. Such denunciation shall take effect on the date on which denunciation of the 1978 protocol takes effect in accordance with article VII of that Protocol.

### *Article 8*

#### DEPOSITARY

1. The present Protocol shall be deposited with the Secretary-General (hereinafter referred to as the "depositary").

2. The depositary shall:

(a) Inform all States which have signed the present Protocol or acceded thereto of:

- (i) Each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
- (ii) The date of entry into force of the present Protocol; and
- (iii) The deposit of any instrument of denunciation of the present Protocol, together with the date on which it was received and the date on which the denunciation takes effect; and

(b) Transmit certified true copies of the present Protocol to all States which have signed the present Protocol or acceded thereto.

3. As soon as the present Protocol enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### *Article 9*

#### LANGUAGES

The present Protocol is established in a single copy 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 the present Protocol.

DONE AT LONDON this twenty-sixth day of September, one thousand nine hundred and ninety-seven.



## ANNEX

### **Addition of annex VI to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto**

The following new annex VI is added after the existing annex V:

#### **Annex VI Regulations for the Prevention of Air Pollution from Ships**

##### **CHAPTER I. GENERAL**

###### **Regulation 1**

###### *Application*

The provisions of this annex shall apply to all ships, except where expressly provided otherwise in regulations 3, 5, 6, 13, 15, 18 and 19 of this annex.

###### **Regulation 2**

###### *Definitions*

For the purpose of this annex:

- (1) "A similar stage of construction" means the stage at which:
    - (a) Construction identifiable with a specific ship begins; and
    - (b) Assembly of that ship has commenced comprising at least 50 tonnes or one per cent of the estimated mass of all structural material, whichever is less;
  - (2) "Continuous feeding" is defined as the process whereby waste is fed into a combustion chamber without human assistance while the incinerator is in normal operating conditions with the combustion chamber operative temperature between 850° C and 1200° C;
  - (3) "Emission" means any release of substances, subject to control by this annex from ships into the atmosphere or sea;
  - (4) "New installations", in relation to regulation 12 of this annex, means the installation of systems, equipment, including new portable fire-extinguishing units, insulation, or other material on a ship after the date on which this annex enters into force, but excludes repair or recharge of previously installed systems, equipment, insulation, or other material, or recharge of portable fire-extinguishing units;
  - (5) "NO<sub>x</sub> Technical Code" means the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines adopted by Conference resolution 2, as may be amended by the Organization, provided that such amendments are adopted and brought into force in accordance with the provisions of article 16 of the present Convention concerning amendment procedures applicable to an appendix to an annex;
  - (6) "Ozone-depleting substances" means controlled substances defined in paragraph 4 of article 1 of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, listed in annexes A, B, C or E to the said Protocol in force at the time of application or interpretation of this annex;
- "Ozone-depleting substances" that may be found on board ship include, but are not limited to:
- |            |   |
|------------|---|
| Halon 1211 | Bromochlorodifluoromethane  |
| Halon 1301 | Bromotrifluoromethane   |
| Halon 2402 | 1,2-Dibromo-1,1,2,2-tetrafluoroethane (also known as Halon 114B2) |
| CFC-11     | Trichlorofluoromethane  |
| CFC-12     | Dichlorodifluoromethane   |
| CFC-113    | 1,1,2-Trichloro-1,1,2,2-trifluoroethane                           |
| CFC-114    | 1,2-Dichloro-1,1,2,2-tetrafluoroethane                            |
| CFC-115    | Chloropentafluoroethane   |

(7) "Sludge oil" means sludge from the fuel or lubricating oil separators, waste lubricating oil from main or auxiliary machinery, or waste oil from bilge water separators, oil filtering equipment or drip trays;

(8) "Shipboard incineration" means the incineration of wastes or other matter on board a ship, if such wastes or other matter were generated during the normal operation of that ship;

(9) "Shipboard incinerator" means a shipboard facility designed for the primary purpose of incineration;

(10) "Ships constructed" means ships the keels of which are laid or which are at a similar stage of construction;

(11) "SO<sub>x</sub> emission control area" means an area where the adoption of special mandatory measures for SO<sub>x</sub> emissions from ships is required to prevent, reduce and control air pollution from SO<sub>x</sub> and its attendant adverse impacts on land and sea areas. SO<sub>x</sub> emission control areas shall include those listed in regulation 14 of this annex;

(12) "Tanker" means an oil tanker as defined in regulation 1(4) of annex I or a chemical tanker as defined in regulation 1(1) of annex II to the present Convention;

(13) "The Protocol of 1997" means the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto.

### Regulation 3

#### *General exceptions*

Regulations of this annex shall not apply to:

(a) Any emission necessary for the purpose of securing the safety of a ship or saving life at sea; or

(b) Any emission resulting from damage to a ship or its equipment:

(i) Provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the emission for the purpose of preventing or minimizing the emission; and

(ii) Except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result.

### Regulation 4

#### *Equivalents*

(1) The Administration may allow any fitting, material, appliance or apparatus to be fitted in a ship as an alternative to that required by this annex if such fitting, material, appliance or apparatus is at least as effective as that required by this annex.

(2) The Administration which allows a fitting, material, appliance or apparatus as an alternative to that required by this annex shall communicate to the Organization for circulation to the Parties to the present Convention particulars thereof, for their information and appropriate action, if any.

## CHAPTER II. SURVEY, CERTIFICATION AND MEANS OF CONTROL

### Regulation 5

#### *Surveys and inspections*

(1) Every ship of 400 gross tonnage or above and every fixed and floating drilling rig and other platforms shall be subject to the surveys specified below:

(a) An initial survey before the ship is put into service or before the certificate required under regulation 6 of this annex is issued for the first time. This survey shall be such as to ensure that the equipment, systems, fittings, arrangements and material fully comply with the applicable requirements of this annex;

(b) Periodical surveys at intervals specified by the Administration, but not exceeding five years, which shall be such as to ensure that the equipment, systems, fittings, arrangements and material fully comply with the requirements of this annex; and

(c) A minimum of one intermediate survey during the period of validity of the certificate which shall be such as to ensure that the equipment and arrangements fully comply with the requirements of this annex and are in good working order. In cases where only one such intermediate survey is carried out in a single certificate validity period, and where the period of the certificate exceeds 2 1/2 years, it shall be held within six months before or after the halfway date of the certificate's period of validity. Such intermediate surveys shall be endorsed on the certificate issued under regulation 6 of this annex.

(2) In the case of ships of less than 400 gross tonnage, the Administration may establish appropriate measures in order to ensure that the applicable provisions of this annex are complied with.

(3) Surveys of ships as regards the enforcement of the provisions of this annex shall be carried out by officers of the Administration. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it. Such organizations shall comply with the guidelines adopted by the Organization.\* In every case the Administration concerned shall fully guarantee the completeness and efficiency of the survey.

(4) The survey of engines and equipment for compliance with regulation 13 of this annex shall be conducted in accordance with the NO<sub>x</sub> Technical Code.

(5) The Administration shall institute arrangements for unscheduled inspections to be carried out during the period of validity of the certificate. Such inspections shall ensure that the equipment remains in all respects satisfactory for the service for which the equipment is intended. These inspections may be carried out by their own inspection service, nominated surveyors, recognized organizations, or by other Parties upon request of the Administration. Where the Administration, under the provisions of paragraph (1) of this regulation, establishes mandatory annual surveys, the above unscheduled inspections shall not be obligatory.

(6) When a nominated surveyor or recognized organization determines that the condition of the equipment does not correspond substantially with the particulars of the certificate, they shall ensure that corrective action is taken and shall in due course notify the Administration. If such corrective action is not taken, the certificate should be withdrawn by the Administration. If the ship is in a port of another Party, the appropriate authorities of the port State shall also be notified immediately. When an officer of the Administration, a nominated surveyor or recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this regulation.

(7) The equipment shall be maintained to conform with the provisions of this annex and no changes shall be made in the equipment, system, fittings, arrangements, or material covered by the survey, without the express approval of the Administration. The direct replacement of such equipment and fittings with equipment and settings that conform with the provisions of this annex is permitted.

Whenever an accident occurs to a ship or a defect is discovered, which substantially affects the efficiency or completeness of its equipment covered by this annex, the master or owner of the ship shall report at the earliest opportunity to the Administration, a nominated surveyor, or recognized organization responsible for issuing the relevant certificate.

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\*Refer to the Guidelines for the authorization of organizations acting on behalf of the Administration, adopted by the Organization by resolution A.739(18), and the Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration, adopted by the Organization by resolution A.789(19).

## Regulation 6

### *Issue of International Air Pollution Prevention Certificate*

(1) An International Air Pollution Prevention Certificate shall be issued, after survey in accordance with the provisions of regulation 5 of this annex, to:

(a) Any ship of 400 gross tonnage or above engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties; and

(b) Platforms and drilling rigs engaged in voyages to waters under the sovereignty or jurisdiction of other Parties to the Protocol of 1997.

(2) Ships constructed before the date of entry into force of the Protocol of 1997 shall be issued with an International Air Pollution Prevention Certificate in accordance with paragraph (1) of this regulation no later than the first scheduled drydocking after entry into force of the Protocol of 1997, but in no case later than three years after entry into force of the Protocol of 1997.

(3) Such certificate shall be issued either by the Administration or by any person or organization duly authorized by it. In every case the Administration assumes full responsibility for the certificate.

## Regulation 7

### *Issue of a Certificate by another Government*

(1) The Government of a Party to the Protocol of 1997 may, at the request of the Administration, cause a ship to be surveyed and, if satisfied that the provisions of this annex are complied with, issue or authorize the issuance of an International Air Pollution Prevention Certificate to the ship in accordance with this annex.

(2) A copy of the certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.

(3) A certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as a certificate issued under regulation 6 of this annex.

(4) No International Air Pollution Prevention Certificate shall be issued to a ship which is entitled to fly the flag of a State which is not a Party to the Protocol of 1997.

## Regulation 8

### *Form of Certificate*

The International Air Pollution Prevention Certificate shall be drawn up in an official language of the issuing country in the form corresponding to the model given in appendix I\* to this annex. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages.

## Regulation 9

### *Duration and validity of Certificate*

(1) An International Air Pollution Prevention Certificate shall be issued for a period specified by the Administration, which shall not exceed five years from the date of issue.

(2) No extension of the five-year period of validity of the International Air Pollution Prevention Certificate shall be permitted, except in accordance with paragraph (3).

(3) If the ship, at the time when the International Air Pollution Prevention Certificate expires, is not in a port of the State whose flag it is entitled to fly or in which it is to be surveyed, the Administration may extend the certificate for a period of no more than five months. Such extension shall be granted only for the purpose of allowing the ship to complete its voyage to the State whose flag it is entitled to fly or in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. After arrival in the State whose flag it is entitled to fly or in which it is to be surveyed, the ship shall not be entitled by

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\*Appendices I to V are not included here.

virtue of such extension to leave the port or State without having obtained a new International Air Pollution Prevention Certificate.

(4) An International Air Pollution Prevention Certificate shall cease to be valid in any of the following circumstances:

(a) If the inspections and surveys are not carried out within the periods specified under regulation 5 of this annex;

(b) If significant alterations have taken place to the equipment, systems, fittings, arrangements or material to which this annex applies without the express approval of the Administration, except the direct replacement of such equipment or fittings with equipment or fittings that conform with the requirements of this annex. For the purpose of regulation 13, significant alteration shall include any change or adjustment to the system, fittings, or arrangement of a diesel engine which results in the nitrogen oxide limits applied to that engine no longer being complied with; or

(c) Upon transfer of the ship to the flag of another State. A new certificate shall be issued only when the Government issuing the new certificate is fully satisfied that the ship is in full compliance with the requirements of regulation 5 of this annex. In the case of a transfer between Parties, if requested within three months after the transfer has taken place, the Government of the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration of the other Party a copy of the International Air Pollution Prevention Certificate carried by the ship before the transfer and, if available, copies of the relevant survey report.

#### Regulation 10

##### *Port State control on operational requirements*

(1) A ship, when in a port or an offshore terminal under the jurisdiction of another Party to the Protocol of 1997, is subject to inspection by officers duly authorized by such Party concerning operational requirements under this annex, where there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of air pollution from ships.

(2) In the circumstances given in paragraph (1) of this regulation, the Party shall take such steps as will ensure that the ship shall not sail until the situation has been brought to order in accordance with the requirements of this annex.

(3) Procedures relating to the port State control prescribed in article 5 of the present Convention shall apply to this regulation.

(4) Nothing in this regulation shall be construed to limit the rights and obligations of a Party carrying out control over operational requirements specifically provided for in the present Convention.

#### Regulation 11

##### *Detection of violations and enforcement*

(1) Parties to this annex shall cooperate in the detection of violations and the enforcement of the provisions of this annex, using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence.

(2) A ship to which the present annex applies may, in any port or offshore terminal of a Party, be subject to inspection by officers appointed or authorized by that Party for the purpose of verifying whether the ship has emitted any of the substances covered by this annex in violation of the provision of this annex. If an inspection indicates a violation of this annex, a report shall be forwarded to the Administration for any appropriate action.

(3) Any Party shall furnish to the Administration evidence, if any, that the ship has emitted any of the substances covered by this annex in violation of the provisions of this annex. If it is practicable to do so, the competent authority of the former Party shall notify the master of the ship of the alleged violation.

(4) Upon receiving such evidence, the Administration so informed shall investigate the matter, and may request the other Party to furnish further or better evidence of the al-

leged contravention. If the Administration is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken in accordance with its law as soon as possible. The Administration shall promptly inform the Party which has reported the alleged violation, as well as the Organization, of the action taken.

(5) A Party may also inspect a ship to which this annex applies when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party together with sufficient evidence that the ship has emitted any of the substances covered by the annex in any place in violation of this annex. The report of such investigation shall be sent to the Party requesting it and to the Administration so that the appropriate action may be taken under the present Convention.

(6) The international law concerning the prevention, reduction, and control of pollution of the marine environment from ships, including that law relating to enforcement and safeguards, in force at the time of application or interpretation of this annex, applies, *mutatis mutandis*, to the rules and standards set forth in this annex.

### CHAPTER III. REQUIREMENTS FOR CONTROL OF EMISSIONS FROM SHIPS

#### Regulation 12

##### *Ozone-depleting substances*

(1) Subject to the provisions of regulation 3, any deliberate emissions of ozone-depleting substances shall be prohibited. Deliberate emissions include emissions occurring in the course of maintaining, servicing, repairing or disposing of systems or equipment, except that deliberate emissions do not include minimal releases associated with the recapture or recycling of an ozone-depleting substance. Emissions arising from leaks of an ozone-depleting substance, whether or not the leaks are deliberate, may be regulated by Parties to the Protocol of 1997.

(2) New installations which contain ozone-depleting substances shall be prohibited on all ships, except that new installations containing hydrochlorofluorocarbons (HCFCs) are permitted until 1 January 2020.

(3) The substances referred to in this regulation, and equipment containing such substances, shall be delivered to appropriate reception facilities when removed from ships.

#### Regulation 13

##### *Nitrogen oxides (NO<sub>x</sub>)*

(1) (a) This regulation shall apply to:

- (i) Each diesel engine with a power output of more than 130 kW which is installed on a ship constructed on or after 1 January 2000; and
- (ii) Each diesel engine with a power output of more than 130 kW which undergoes a major conversion on or after 1 January 2000.

(b) This regulation does not apply to:

- (i) Emergency diesel engines, engines installed in lifeboats and any device or equipment intended to be used solely in case of emergency; and
- (ii) Engines installed on ships solely engaged in voyages within waters subject to the sovereignty or jurisdiction of the State the flag of which the ship is entitled to fly, provided that such engines are subject to an alternative NO<sub>x</sub> control measure established by the Administration.

(c) Notwithstanding the provisions of subparagraph (a) of this paragraph, the Administration may allow exclusion from the application of this regulation to any diesel engine which is installed on a ship constructed, or on a ship which undergoes a major conversion, before the date of entry into force of the present Protocol, provided that the ship is solely engaged in voyages to ports or offshore terminals within the State the flag of which the ship is entitled to fly.

(2) (a) For the purpose of this regulation, "major conversion" means a modification of an engine where:

- (i) The engine is replaced by a new engine built on or after 1 January 2000, or

- (ii) Any substantial modification, as defined in the NO<sub>x</sub> Technical Code, is made to the engine, or
- (iii) The maximum continuous rating of the engine is increased by more than 10 per cent.

(b) The NO<sub>x</sub> emission resulting from modifications referred to in subparagraph (a) of this paragraph shall be documented in accordance with the NO<sub>x</sub> Technical Code for approval by the Administration.

(3) (a) Subject to the provision of regulation 3 of this annex, the operation of each diesel engine to which this regulation applies is prohibited, except when the emission of nitrogen oxides (calculated as the total weighted emission of NO<sub>2</sub>) from the engine is within the following limits:

- (i) 17.0 g/kW h when  $n$  is less than 130 rpm
- (ii)  $45.0 \times n^{(-0.2)}$  g/kW h when  $n$  is 130 or more but less than 2,000 rpm
- (iii) 9.8 g/kW h when  $n$  is 2,000 rpm or more

where  $n$  is = rated engine speed (crankshaft revolutions per minute).

When using fuel composed of blends from hydrocarbons derived from petroleum refining, test procedure and measurement methods shall be in accordance with the NO<sub>x</sub> Technical Code, taking into consideration the test cycles and weighting factors outlined in appendix II to this annex.

(b) Notwithstanding the provisions of subparagraph (a) of this paragraph, the operation of a diesel engine is permitted when:

- (i) An exhaust gas cleaning system, approved by the Administration in accordance with the NO<sub>x</sub> Technical Code, is applied to the engine to reduce onboard NO<sub>x</sub> emissions at least to the limits specified in subparagraph (a), or
- (ii) Any other equivalent method, approved by the Administration taking into account relevant guidelines to be developed by the Organization, is applied to reduce onboard NO<sub>x</sub> emissions at least to the limit specified in subparagraph (a) of this paragraph.

## Regulation 14

### *Sulphur oxides (SO<sub>x</sub>)*

#### *General requirements*

(1) The sulphur content of any fuel oil used on board ships shall not exceed 4.5 per cent m/m.

(2) The worldwide average sulphur content of residual fuel oil supplied for use on board ships shall be monitored taking into account guidelines to be developed by the Organization.

#### *Requirements within SO<sub>x</sub> emission control areas*

(3) For the purpose of this regulation, SO<sub>x</sub> emission control areas shall include:

(a) The Baltic Sea area as defined in regulation 10(1)(b) of annex I; and

(b) Any other sea area, including port areas, designated by the Organization in accordance with criteria and procedures for designation of SO<sub>x</sub> emission control areas with respect to the prevention of air pollution from ships contained in appendix III to this annex.

(4) While ships are within SO<sub>x</sub> emission control areas, at least one of the following conditions shall be fulfilled:

(a) The sulphur content of fuel oil used on board ships in a SO<sub>x</sub> emission control area does not exceed 1.5 per cent m/m;

(b) An exhaust gas cleaning system, approved by the Administration taking into account guidelines to be developed by the Organization, is applied to reduce the total emission of sulphur oxides from ships, including both auxiliary and main propulsion engines, to 6.0 g SO<sub>x</sub>/kW h or less calculated as the total weight of sulphur dioxide emission. Waste streams from the use of such equipment shall not be discharged into enclosed ports, harbours and estuaries unless it can be thoroughly documented by the ship that such waste streams have no adverse impact on the ecosystems of such enclosed ports, harbours and estuaries, based

upon criteria communicated by the authorities of the port State to the Organization. The Organization shall circulate the criteria to all Parties to the Convention; or

(c) any other technological method that is verifiable and enforceable to limit SO<sub>x</sub> emissions to a level equivalent to that described in subparagraph (b) is applied. These methods shall be approved by the Administration taking into account guidelines to be developed by the Organization.

(5) The sulphur content of fuel oil referred to in paragraph (1) and paragraph (4)(a) of this regulation shall be documented by the supplier as required by regulation 18 of this annex.

(6) Those ships using separate fuel oils to comply with paragraph (4)(a) of this regulation shall allow sufficient time for the fuel oil service system to be fully flushed of all fuels exceeding 1.5 per cent m/m sulphur content prior to entry into an SO<sub>x</sub> emission control area. The volume of low sulphur fuel oils (less than or equal to 1.5 per cent sulphur content) in each tank as well as the date, time and position of the ship when any fuel-changeover operation is completed, shall be recorded in such logbook as prescribed by the Administration.

(7) During the first 12 months immediately following entry into force of the present Protocol, or of an amendment to the present Protocol designating a specific SO<sub>x</sub> emission control area under paragraph (3)(b) of this regulation, ships entering an SO<sub>x</sub> emission control area referred to in paragraph (3)(a) of this regulation or designated under paragraph (3)(b) of this regulation are exempted from the requirements in paragraphs (4) and (6) of this regulation and from the requirements of paragraph (5) of this regulation insofar as they relate to paragraph (4)(a) of this regulation.

#### Regulation 15

##### *Volatile organic compounds*

(1) If the emissions of volatile organic compounds (VOCs) from tankers are to be regulated in ports or terminals under the jurisdiction of a Party to the Protocol of 1997, they shall be regulated in accordance with the provisions of this regulation.

(2) A Party to the Protocol of 1997 which designates ports or terminals under its jurisdiction in which VOCs emissions are to be regulated, shall submit a notification to the Organization. This notification shall include information on the size of tankers to be controlled, on cargoes requiring vapour emission control systems, and the effective date of such control. The notification shall be submitted at least six months before the effective date.

(3) The Government of each Party to the Protocol of 1997 which designates ports or terminals at which VOCs emissions from tankers are to be regulated shall ensure that vapour emission control systems, approved by that Government taking into account the safety standards developed by the Organization,\* are provided in ports and terminals designated, and are operated safely and in a manner so as to avoid undue delay to the ship.

(4) The Organization shall circulate a list of the ports and terminals designated by the Parties to the Protocol of 1997 to other Parties to the Protocol of 1997 and member States of the Organization for their information.

(5) All tankers which are subject to vapour emission control in accordance with the provisions of paragraph (2) of this regulation shall be provided with a vapour collection system approved by the Administration taking into account the safety standards developed by the Organization,\* and shall use such system during the loading of such cargoes. Terminals which have installed vapour emission control systems in accordance with this regulation may accept existing tankers which are not fitted with vapour collection systems for a period of three years after the effective date identified in paragraph (2).

(6) This regulation shall only apply to gas carriers when the type of loading and containment systems allow safe retention of non-methane VOCs on board, or their safe return ashore.

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\*Refer to MSC/Circ.585, Standards for vapour emission control systems.



## Regulation 16

### *Shipboard incineration*

(1) Except as provided in paragraph (5), shipboard incineration shall be allowed only in a shipboard incinerator.

(2) (a) Except as provided in subparagraph (b) of this paragraph, each incinerator installed on board a ship on or after 1 January 2000 shall meet the requirements contained in appendix IV to this annex. Each incinerator shall be approved by the Administration taking into account the standard specifications for shipboard incinerators developed by the Organization.\*

(b) The Administration may allow exclusion from the application of subparagraph (a) of this paragraph to any incinerator which is installed on board a ship before the date of entry into force of the Protocol of 1997, provided that the ship is solely engaged in voyages within waters subject to the sovereignty or jurisdiction of the State the flag of which the ship is entitled to fly.

(3) Nothing in this regulation affects the prohibition in, or other requirements of, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended, and the 1996 Protocol thereto.

(4) Shipboard incineration of the following substances shall be prohibited:

(a) Annex I, II and III cargo residues of the present convention and related contaminated packing materials;

(b) Polychlorinated biphenyls (PCBs);

(c) Garbage as defined in annex V of the present Convention, containing more than traces of heavy metals; and

(d) Refined petroleum products containing halogen compounds.

(5) Shipboard incineration of sewage sludge and sludge oil generated during the normal operation of a ship may also take place in the main or auxiliary power plant or boilers, but in those cases shall not take place inside ports, harbours and estuaries.

(6) Shipboard incineration of polyvinyl chlorides (PVCs) shall be prohibited, except in shipboard incinerators for which IMO Type Approval Certificates have been issued.

(7) All ships with incinerators subject to this regulation shall possess a manufacturer's operating manual which shall specify how to operate the incinerator within the limits described in paragraph 2 of appendix IV to this annex.

(8) Personnel responsible for operation of any incinerator shall be trained and capable of implementing the guidance provided in the manufacturer's operating manual.

(9) Monitoring of combustion flue gas outlet temperature shall be required at all times and waste shall not be fed into a continuous-feed shipboard incinerator when the temperature is below the minimum allowed temperature of 850° C. For batch-loaded shipboard incinerators, the unit shall be designed so that the temperature in the combustion chamber shall reach 600° C within five minutes after start-up.

(10) Nothing in this regulation precludes the development, installation and operation of alternative design shipboard thermal waste treatment devices that meet or exceed the requirements of this regulation.

## Regulation 17

### *Reception facilities*

(1) The Government of each Party to the Protocol of 1997 undertakes to ensure the provision of facilities adequate to meet the:

(a) Needs of ships using its repair ports for the reception of ozone-depleting substances and equipment containing such substances when removed from ships;

(b) Needs of ships using its ports, terminals or repair ports for the reception of exhaust gas cleaning residues from an approved exhaust gas cleaning system when discharge into the marine environment of these residues is not permitted under regulation 14 of this annex; without causing undue delay to ships, and

\*Refer to resolution MEPC 76(40), Standard specifications for shipboard incinerators.

(c) Needs in ship breaking facilities for the reception of ozone-depleting substances and equipment containing such substances when removed from ships.

(2) Each Party to the Protocol of 1997 shall notify the Organization for transmission to the members of the Organization of all cases where the facilities provided under this regulation are unavailable or alleged to be inadequate.

## Regulation 18

### *Fuel oil quality*

(1) Fuel oil for combustion purposes delivered to and used on board ships to which this annex applies shall meet the following requirements:

(a) Except as provided in subparagraph (b):

- (i) The fuel oil shall be blends of hydrocarbons derived from petroleum refining. This shall not preclude the incorporation of small amounts of additives intended to improve some aspects of performance;
- (ii) The fuel oil shall be free from inorganic acid;
- (iii) The fuel oil shall not include any added substance or chemical waste which either:
  - (1) Jeopardizes the safety of ships or adversely affects the performance of the machinery, or
  - (2) Is harmful to personnel, or
  - (3) Contributes overall to additional air pollution; and

(b) Fuel oil for combustion purposes derived by methods other than petroleum refining shall not:

- (i) Exceed the sulphur content set forth in regulation 14 of this annex;
- (ii) Cause an engine to exceed the NO<sub>x</sub> emission limits set forth in regulation 13(3)(a) of this annex;
- (iii) Contain inorganic acid; and
- (iv)
  - (1) Jeopardize the safety of ships or adversely affect the performance of the machinery, or
  - (2) Be harmful to personnel, or
  - (3) Contribute overall to additional air pollution.

(2) This regulation does not apply to coal in its solid form or nuclear fuels.

(3) For each ship subject to regulations 5 and 6 of this annex, details of fuel oil for combustion purposes delivered to and used on board shall be recorded by means of a bunker delivery note which shall contain at least the information specified in appendix V to this annex.

(4) The bunker delivery note shall be kept on board the ship in such a place as to be readily available for inspection at all reasonable times. It shall be retained for a period of three years after the fuel oil has been delivered on board.

(5) (a) The competent authority\* of the Government of a Party to the Protocol of 1997 may inspect the bunker delivery notes on board any ship to which this annex applies while the ship is in its port or offshore terminal, may make a copy of each delivery note, and may require the master or person in charge of the ship to certify that each copy is a true copy of such bunker delivery note. The competent authority may also verify the contents of each note through consultations with the port where the note was issued.

(b) The inspection of the bunker delivery notes and the taking of certified copies by the competent authority under this paragraph shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

(6) The bunker delivery note shall be accompanied by a representative sample of the fuel oil delivered taking into account guidelines to be developed by the Organization. The sample is to be sealed and signed by the supplier's representative and the master or officer in charge of the bunker operation on completion of bunkering operations and retained under the ship's control until the fuel oil is substantially consumed, but in any case for a period of not less than 12 months from the time of delivery.

(7) Parties to the Protocol of 1997 undertake to ensure that appropriate authorities designated by them:

\*Refer to resolution A.787(19), Procedures for port State control.

- (a) Maintain a register of local suppliers of fuel oil;
  - (b) Require local suppliers to provide the bunker delivery note and sample as required by this regulation, certified by the fuel oil supplier that the fuel oil meets the requirements of regulations 14 and 18 of this annex;
  - (c) Require local suppliers to retain a copy of the bunker delivery note for at least three years for inspection and verification by the port State as necessary;
  - (d) Take action as appropriate against fuel oil suppliers that have been found to deliver fuel oil that does not comply with that stated on the bunker delivery note;
  - (e) Inform the Administration of any ship receiving fuel oil found to be non-compliant with the requirements of regulations 14 or 18 of this annex; and
  - (f) Inform the Organization for transmission to Parties to the Protocol of 1997 of all cases where fuel oil suppliers have failed to meet the requirements specified in regulations 14 or 18 of this annex.
- (8) In connection with port State inspections carried out by Parties to the Protocol of 1997, the Parties further undertake to:
- (a) Inform the Party or non-Party under whose jurisdiction the bunker delivery note was issued of cases of delivery of non-compliant fuel oil, giving all relevant information; and
  - (b) Ensure that remedial action as appropriate is taken to bring non-compliant fuel oil discovered into compliance.

### Regulation 19

#### *Requirements for platforms and drilling rigs*

- (1) Subject to the provisions of paragraphs (2) and (3) of this regulation, fixed and floating platforms and drilling rigs shall comply with the requirements of this annex.
- (2) Emissions directly arising from the exploration, exploitation and associated offshore processing of seabed mineral resources are, consistent with article 2(3)(b)(ii) of the present Convention, exempt from the provisions of this annex. Such emissions include the following:
  - (a) Emissions resulting from the incineration of substances that are solely and directly the result of exploration, exploitation and associated offshore processing of seabed mineral resources, including but not limited to the flaring of hydrocarbons and the burning of cuttings, muds, and/or stimulation fluids during well completion and testing operations, and flaring arising from upset conditions;
  - (b) The release of gases and volatile compounds entrained in drilling fluids and cuttings;
  - (c) Emissions associated solely and directly with the treatment, handling, or storage of seabed minerals; and
  - (d) Emissions from diesel engines that are solely dedicated to the exploration, exploitation and associated offshore processing of seabed mineral resources.

The requirements of regulation 18 of this annex shall not apply to the use of hydrocarbons which are produced and subsequently used on site as fuel, when approved by the Administration.

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## 3. INTERNATIONAL ATOMIC ENERGY AGENCY

- (a) Protocol to amend the Vienna Convention on Civil Liability for Nuclear Damage.<sup>14</sup> Done at Vienna on 12 September 1997<sup>15</sup>

#### *The States Parties to this Protocol*

Considering that it is desirable to amend the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, to provide for broader scope, in-

creased amount of liability of the operator of a nuclear installation and enhanced means for securing adequate and equitable compensation,

*Have agreed* as follows,

### *Article 1*

The Convention which the provisions of this Protocol amend is the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, hereinafter referred to as the "1963 Vienna Convention".

### *Article 2*

Article I of the 1963 Vienna Convention is amended as follows:

1. Paragraph 1(j) is amended as follows:

(a) The word "and" is deleted at the end of subparagraph (ii) and is inserted at the end of subparagraph (iii).

(b) A new subparagraph (iv) is added as follows:

(iv) such other installations in which there are nuclear fuel or radioactive products or waste as the Board of Governors of the International Atomic Energy Agency shall from time to time determine;

2. Paragraph 1(k) is replaced by the following text:

(k) "Nuclear damage" means:

(i) Loss of life or personal injury;

(ii) Loss of or damage to property;

and each of the following to the extent determined by the law of the competent court:

(iii) Economic loss arising from loss or damage referred to in subparagraph (i) or (ii), insofar as not included in those subparagraphs, if incurred by a person entitled to claim in respect of such loss or damage;

(iv) The costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in subparagraph (ii);

(v) Loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of significant impairment of that environment, and insofar as not included in subparagraph (ii);

(vi) The costs of preventive measures, and further loss or damage caused by such measures;

(vii) Any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of subparagraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any

source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

3. Paragraph 1(*l*) is replaced by the following text:

(*l*) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage.

4. After paragraph 1(*l*) four new paragraphs 1(*m*), 1(*n*), 1(*o*) and 1(*p*) are added as follows:

(*m*) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures.

(*n*) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in subparagraphs (*k*)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(*o*) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate having regard to all the circumstances, for example:

- (i) The nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
- (ii) The extent to which, at the time they are taken, such measures are likely to be effective; and
- (iii) Relevant scientific and technical expertise.

(*p*) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions.

5. Paragraph 2 is replaced by the following text:

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that:

(*a*) With respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and

(*b*) With respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the

Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

### *Article 3*

After article I of the 1963 Vienna Convention, two new articles I A and I B are added as follows:

#### *Article I A*

1. This Convention shall apply to nuclear damage wherever suffered.
2. However, the legislation of the Installation State may exclude from the application of this Convention damage suffered:
  - (a) In the territory of a non-Contracting State; or
  - (b) In any maritime zones established by a non-Contracting State in accordance with the international law of the sea.
3. An exclusion pursuant to paragraph 2 of this article may apply only in respect of a non-Contracting State which at the time of the incident:
  - (a) Has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea; and
  - (b) Does not afford equivalent reciprocal benefits.
4. Any exclusion pursuant to paragraph 2 of this article shall not affect the rights referred to in subparagraph (a) of paragraph 2 of article IX and any exclusion pursuant to paragraph 2(b) of this article shall not extend to damage on board or to a ship or an aircraft.

#### *Article I B*

This Convention shall not apply to nuclear installations used for non-peaceful purposes.

### *Article 4*

Article II of the 1963 Vienna Convention is amended as follows:

1. At the end of paragraph 3(a), the following text is added:  
The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to paragraph 1 of article V.
2. At the end of paragraph 4, the following text is added:  
The Installation State may limit the amount of public funds made available as provided for in subparagraph (a) of paragraph 3 of this article.
3. Paragraph 6 is replaced by the following text:

6. No person shall be liable for any loss or damage which is not nuclear damage pursuant to subparagraph (k) of paragraph 1 of article I but which could have been determined as such pursuant to the provisions of that subparagraph.

#### *Article 5*

After the first sentence in article III of the 1963 Vienna Convention, the following text is added:

However, the Installation State may exclude this obligation in relation to carriage which takes place wholly within its own territory.

#### *Article 6*

Article IV of the 1963 Vienna Convention is amended as follows:

1. Paragraph 3 is replaced by the following text:

3. No liability under this Convention shall attach to an operator if he proves that the nuclear damage is directly due to an act of armed conflict, hostilities, civil war or insurrection.

2. Paragraph 5 is replaced by the following text:

5. The operator shall not be liable under this Convention for nuclear damage:

(a) To the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(b) To any property on that same site which is used or to be used in connection with any such installation.

3. Paragraph 6 is replaced by the following text:

6. Compensation for damage caused to the means of transport upon which the nuclear material involved was at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party, or an amount established pursuant to subparagraph (c) of paragraph 1 of article V.

4. Paragraph 7 is replaced by the following text:

7. Nothing in this Convention shall affect the liability of any individual for nuclear damage for which the operator, by virtue of paragraph 3 or 5 of this article, is not liable under this Convention and which that individual caused by an act or omission done with intent to cause damage.

#### *Article 7*

1. The text of article V of the 1963 Vienna Convention is replaced by the following text:

1. The liability of the operator may be limited by the Installation State for any one nuclear incident, either:

(a) To not less than 300 million SDRs; or

(b) To not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage; or

(c) For a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds shall be made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.

2. Notwithstanding paragraph 1 of this article, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2 of this article and paragraph 6 of article IV shall apply wherever the nuclear incident occurs.

2. After article V, four new articles V A, V B, V C and V D are added, as follows:

#### *Article V A*

1. Interest and costs awarded by a court in actions for compensation of nuclear damage shall be payable in addition to the amounts referred to in article V.

2. The amounts mentioned in article V and paragraph 6 of article IV may be converted into national currency in round figures.

#### *Article V B*

Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.

#### *Article V C*

1. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds required under subparagraphs (b) and (c) of paragraph 1 of article V and under paragraph 1 of article VII, as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State shall reimburse to the other Contracting Party any such sums paid. These two Contracting Parties shall agree on the procedure for reimbursement.

2. If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the Contracting Party whose courts have jurisdiction shall take all measures necessary to enable the Installation State to



intervene in proceedings and to participate in any settlement concerning compensation.

#### *Article V D*

1. A meeting of the Contracting Parties shall be convened by the Director General of the International Atomic Energy Agency to amend the limits of liability referred to in article V if one third of the Contracting Parties express a desire to that effect.

2. Amendments shall be adopted by a two-thirds majority of the Contracting Parties present and voting, provided that at least one half of the Contracting Parties shall be present at the time of the voting.

3. When acting on a proposal to amend the limits, the meeting of the Contracting Parties shall take into account, inter alia, the risk of damage resulting from a nuclear incident, changes in the monetary values, and the capacity of the insurance market.

4. (a) Any amendment adopted in accordance with paragraph 2 of this article shall be notified by the Director General of the IAEA to all Contracting Parties for acceptance. The amendment shall be considered accepted at the end of a period of 18 months after it has been notified provided that at least one third of the Contracting Parties at the time of the adoption of the amendment by the meeting have communicated to the Director General of the IAEA that they accept the amendment. An amendment accepted in accordance with this paragraph shall enter into force 12 months after its acceptance for those Contracting Parties which have accepted it.

(b) If, within a period of 18 months from the date of notification for acceptance, an amendment has not been accepted in accordance with subparagraph (a), the amendment shall be considered rejected.

5. For each Contracting Party accepting an amendment after it has been accepted but not entered into force or after its entry into force in accordance with paragraph 4 of this article, the amendment shall enter into force 12 months after its acceptance by that Contracting Party.

6. A State which becomes a Party to this Convention after the entry into force of an amendment in accordance with paragraph 4 of this article shall, failing an expression of a different intention by that State:

(a) Be considered as a Party to this Convention as so amended; and

(b) Be considered as a Party to the unamended Convention in relation to any State Party not bound by the amendment.

#### *Article 8*

Article VI of the 1963 Vienna Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. (a) Rights of compensation under this Convention shall be extinguished if an action is not brought within:

(i) With respect to loss of life and personal injury, thirty years from the date of the nuclear incident;

- (ii) With respect to other damage, ten years from the date of the nuclear incident.

(b) If, however, under the law of the Installation State, the liability of the operator is covered by insurance or other financial security including State funds for a longer period, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after such a longer period which shall not exceed the period for which his liability is so covered under the law of the Installation State.

(c) Actions for compensation with respect to loss of life and personal injury or, pursuant to an extension under subparagraph (b) of this paragraph with respect to other damage, which are brought after a period of ten years from the date of the nuclear incident shall in no case affect the rights of compensation under this Convention of any person who has brought an action against the operator before the expiry of that period.

2. Paragraph 2 is deleted.

3. Paragraph 3 is replaced by the following text:

3. Rights of compensation under the Convention shall be subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within three years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that the periods established pursuant to subparagraphs (a) and (b) of paragraph 1 of this article shall not be exceeded.

### *Article 9*

Article VII is amended as follows:

1. In paragraph 1, the following two sentences are added at the end of the paragraph and the paragraph so amended becomes subparagraph (a) of that paragraph:

Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

2. A new subparagraph (b) is added to paragraph 1 as follows:

(b) Notwithstanding subparagraph (a) of this paragraph, where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other fi-

nancial security is inadequate to satisfy such claims, and up to the limit provided pursuant to subparagraph (a) of this paragraph.

3. In paragraph 3, the words “or subparagraphs (b) and (c) of paragraph 1 of article V” are inserted after the words “of this article”.

#### *Article 10*

Article VIII of the 1963 Vienna Convention is amended as follows:

1. The text of article VIII becomes paragraph 1 of that article.

2. A new paragraph 2 is added as follows:

2. Subject to application of the rule of subparagraph (c) of paragraph 1 of article VI, where in respect of claims brought against the operator the damage to be compensated under this Convention exceeds, or is likely to exceed, the maximum amount made available pursuant to paragraph 1 of article V, priority in the distribution of the compensation shall be given to claims in respect of loss of life or personal injury.

#### *Article 11*

In article X of the 1963 Vienna Convention, a new sentence is added at the end of the article, as follows:

The right of recourse provided for under this article may also be extended to benefit the Installation State insofar as it has provided public funds pursuant to this Convention.

#### *Article 12*

Article XI of the 1963 Vienna Convention is amended as follows:

1. A new paragraph 1bis is added, as follows:

1bis. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary of the international law of the sea, including the United Nations Convention on the Law of the Sea.

2. Paragraph 2 is replaced by the following text:

2. Where a nuclear incident does not occur within the territory of any Contracting Party, or within an area notified pursuant to paragraph 1bis, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Installation State of the operator liable.

3. In paragraph 3, first line, and in subparagraph (b), after the figure “1”, insert “, 1bis”.

4. A new paragraph 4 is added, as follows:

4. The Contracting Party whose courts have jurisdiction shall ensure that only one of its courts shall have jurisdiction in relation to any one nuclear incident.

### *Article 13*

After article XI, a new article XI A is added, as follows:

#### *Article XI A*

The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage:

(a) Any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and

(b) Any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

### *Article 14*

The text of article XII of the 1963 Vienna Convention is replaced by the following text:

#### *Article XII*

1. A judgement that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized, except:

(a) Where the judgement was obtained by fraud;

(b) Where the party against whom the judgement was pronounced was not given a fair opportunity to present his case; or

(c) Where the judgement is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

2. A judgement which is recognized under paragraph 1 of this article shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgement of a court of that Contracting Party. The merits of a claim on which the judgement has been given shall not be subject to further proceedings.

### *Article 15*

Article XIII of the 1963 Vienna Convention is amended as follows:

1. The text of article XIII becomes paragraph 1 of that article.

2. A new paragraph 2 is added, as follows:

2. Notwithstanding paragraph 1 of this article, insofar as compensation for nuclear damage is in excess of 150 million SDRs, the legislation of the Installation State may derogate from the provisions of this Convention with respect to nuclear damage suffered in the territory, or in any maritime zone established in accordance with the international law of the sea, of another State which, at the time of the incident, has a nuclear installation in such territory, to the extent that it does not afford reciprocal benefits of an equivalent amount.

#### *Article 16*

The text of article XVIII of the 1963 Vienna Convention is replaced by the following text:

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.

#### *Article 17*

After article XX of the 1963 Vienna Convention, a new article XX A is added, as follows:

#### *Article XX A*

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.

2. If a dispute of this character referred to in paragraph 1 of this article cannot be settled within six months from the request for consultation pursuant to paragraph 1 of this article, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2 of this article. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 of this article with respect to a Contracting Party for which such a declaration is in force.

4. A Contracting Party which has made a declaration in accordance with paragraph 3 of this article may at any time withdraw it by notification to the depositary.

### *Article 18*

1. Articles XX to XXV, paragraphs 2, 3, and paragraph number "1." of article XXVI, and articles XXVII and XXIX of the 1963 Vienna Convention are deleted.

2. The 1963 Vienna Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single text that may be referred to as the 1997 Vienna Convention on Civil Liability for Nuclear Damage.

### *Article 19*

1. A State which is a Party to this Protocol but not a Party to the 1963 Vienna Convention shall be bound by the provisions of that Convention as amended by this Protocol in relation to other States Parties hereto, and failing an expression of a different intention by that State at the time of deposit of an instrument referred to in article 20 shall be bound by the provisions of the 1963 Vienna Convention in relation to States which are only Parties thereto.

2. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the 1963 Vienna Convention and to this Protocol with respect to a State which is a Party to the 1963 Vienna Convention but not a Party to this Protocol.

### *Article 20*

1. This Protocol shall be open for signature by all States at the headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.

2. This Protocol is subject to ratification, acceptance or approval by States which have signed it.

3. After its entry into force, any State which has not signed this Protocol may accede to it.

4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Director General of the International Atomic Energy Agency, who shall be the depositary of this Protocol.

### *Article 21*

1. This Protocol shall enter into force three months after the date of deposit of the fifth instrument of ratification, acceptance or approval.

2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the fifth instrument of ratification, acceptance or approval, this Protocol shall enter into force three months after the date of deposit by such State of the appropriate instrument.

### *Article 22*

1. Any Contracting Party may denounce this Protocol by written notification to the depositary.

2. Denunciation shall take effect one year after the date on which the notification is received by the depositary.

3. As between the Parties to this Protocol, denunciation by any of them of the 1963 Vienna Convention in accordance with its article XXVI shall not be construed in any way as denunciation of the 1963 Vienna Convention as amended by this Protocol.

4. Notwithstanding a denunciation of this Protocol by a Contracting Party pursuant to this article, the provisions of this Protocol shall continue to apply to any nuclear damage caused by a nuclear incident occurring before such denunciation takes effect.

#### *Article 23*

The depositary shall promptly notify States Parties and all other States of:

- (a) Each signature of this Protocol;
- (b) Each deposit of an instrument of ratification, acceptance, approval or accession;
- (c) The entry into force of this Protocol;
- (d) Any notification received pursuant to paragraph 1 bis of article XI;
- (e) Requests for the convening of a revision conference pursuant to article XXVI of the 1963 Vienna Convention and for a meeting of the Contracting Parties pursuant to article V D of the 1963 Vienna Convention as amended by this Protocol;
- (f) Notifications of denunciations received pursuant to article 22 and other pertinent notifications relating to this Protocol.

#### *Article 24*

1. The original of this Protocol, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary.

2. The International Atomic Energy Agency shall establish the consolidated text of the 1963 Vienna Convention as amended by this Protocol in the Arabic, Chinese, English, French, Russian and Spanish languages as set forth in the annex to this Protocol.

3. The depositary shall communicate to all States the certified true copies of this Protocol together with the consolidated text of the 1963 Vienna Convention as amended by this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Vienna, the twelfth day of September, one thousand nine hundred and ninety-seven.

- (b) Convention on Supplementary Compensation for Nuclear Damage.<sup>16</sup>  
Done at Vienna on 12 September 1997<sup>17</sup>

#### *The Contracting Parties,*

*Recognizing* the importance of the measures provided in the Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention on Third

Party Liability in the Field of Nuclear Energy as well as in national legislation on compensation for nuclear damage consistent with the principles of these Conventions;

*Desirous* of establishing a worldwide liability regime to supplement and enhance these measures with a view to increasing the amount of compensation for nuclear damage;

*Recognizing* further that such a worldwide liability regime would encourage regional and global cooperation to promote a higher level of nuclear safety in accordance with the principles of international partnership and solidarity;

*Have agreed* as follows:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article I*

##### DEFINITIONS

For the purposes of this Convention:

(a) "Vienna Convention" means the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for a Contracting Party to this Convention;

(b) "Paris Convention" means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 and any amendment thereto which is in force for a Contracting Party to this Convention;

(c) "Special Drawing Right", hereinafter referred to as SDR, means the unit of account defined by the International Monetary Fund and used by it for its own operations and transactions;

(d) "Nuclear reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons;

(e) "Installation State", in relation to a nuclear installation, means the Contracting Party within whose territory that installation is situated or, if it is not situated within the territory of any State, the Contracting Party by which or under the authority of which the nuclear installation is operated;

(f) "Nuclear damage" means:

(i) Loss of life or personal injury;

(ii) Loss of or damage to property;

and each of the following to the extent determined by the law of the competent court:

- (iii) Economic loss arising from loss or damage referred to in subparagraph (i) or (ii), insofar as not included in those subparagraphs, if incurred by a person entitled to claim in respect of such loss or damage;
- (iv) The costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in subparagraph (ii);



- (v) Loss of income deriving from an economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in subparagraph (ii);
- (vi) The costs of preventive measures, and further loss or damage caused by such measures;
- (vii) Any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court,

in the case of subparagraphs (i) to (v) and (vii) above, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter;

(g) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The law of the State where the damage is suffered shall determine who is entitled to take such measures;

(h) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident has occurred to prevent or minimize damage referred to in subparagraphs (f)(i) to (v) or (vii), subject to any approval of the competent authorities required by the law of the State where the measures were taken;

(i) "Nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage or, but only with respect to preventive measures, creates a grave and imminent threat of causing such damage;

(j) "Installed nuclear capacity" means for each Contracting Party the total of the number of units given by the formula set out in article IV.2; and "thermal power" means the maximum thermal power authorized by the competent national authorities;

(k) "Law of the competent court" means the law of the court having jurisdiction under this Convention, including any rules of such law relating to conflict of laws;

(l) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:

- (i) The nature and extent of the damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;
- (ii) The extent to which, at the time they are taken, such measures are likely to be effective; and
- (iii) Relevant scientific and technical expertise.

## *Article II*

### PURPOSE AND APPLICATION

1. The purpose of this Convention is to supplement the system of compensation provided pursuant to national law which:

- (a) Implements one of the instruments referred to in article I(a) and (b); or
- (b) Complies with the provisions of the annex to this Convention.

2. The system of this Convention shall apply to nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable under either one of the Conventions referred to in article I or national law mentioned in paragraph 1(b) of this article.

3. The annex referred to in paragraph 1(b) shall constitute an integral part of this Convention.

## CHAPTER II

### COMPENSATION

#### *Article III*

#### UNDERTAKING

1. Compensation in respect of nuclear damage per nuclear incident shall be ensured by the following means:

- (a) (i) The Installation State shall ensure the availability of 300 million SDRs or a greater amount that it may have specified to the depositary at any time prior to the nuclear incident, or a transitional amount pursuant to subparagraph (ii);
- (ii) A Contracting Party may establish, for the maximum of 10 years from the date of the opening for signature of this Convention, a transitional amount of at least 150 million SDRs in respect of a nuclear incident occurring within that period.

(b) Beyond the amount made available under subparagraph (a), the Contracting Parties shall make available public funds according to the formula specified in article IV.

2. (a) Compensation for nuclear damage in accordance with paragraph 1(a) shall be distributed equitably without discrimination on the basis of nationality, domicile or residence, provided that the law of the Installation State may, subject to obligations of that State under other conventions on nuclear liability, exclude nuclear damage suffered in a non-Contracting State.

(b) Compensation for nuclear damage, in accordance with paragraph 1(b), shall, subject to articles V and XI.1(b), be distributed equitably without discrimination on the basis of nationality, domicile or residence.

3. If the nuclear damage to be compensated does not require the total amount under paragraph 1(b), the contributions shall be reduced proportionally.

4. The interest and costs awarded by a court in actions for compensation of nuclear damage are payable in addition to the amounts awarded pursuant to paragraphs 1(a) and (b) and shall be proportionate to the actual contributions made

pursuant to paragraphs 1(a) and (b), respectively, by the operator liable, the Contracting Party in whose territory the nuclear installation of that operator is situated, and the Contracting Parties together.

#### *Article IV*

##### CALCULATION OF CONTRIBUTIONS

1. The formula for contributions according to which the Contracting Parties shall make available the public funds referred to in article III.1(b) shall be determined as follows:

- (a) (i) The amount which shall be the product of the installed nuclear capacity of that Contracting Party multiplied by 300 SDRs per unit of installed capacity; and
- (ii) The amount determined by applying the ratio between the United Nations rate of assessment for that Contracting Party as assessed for the year preceding the year in which the nuclear incident occurs, and the total of such rates for all Contracting Parties to 10 per cent of the sum of the amounts calculated for all Contracting Parties under subparagraph (i).

(b) Subject to subparagraph (c), the contribution of each Contracting Party shall be the sum of the amounts referred to in subparagraphs (a)(i) and (ii), provided that States on the minimum United Nations rate of assessment with no nuclear reactors shall not be required to make contributions.

(c) The maximum contribution which may be charged per nuclear incident to any Contracting Party, other than the Installation State, pursuant to subparagraph (b) shall not exceed its specified percentage of the total of contributions of all Contracting Parties determined pursuant to subparagraph (b). For a particular Contracting Party, the specified percentage shall be its United Nations rate of assessment expressed as a percentage plus eight percentage points. If, at the time an incident occurs, the total installed capacity represented by the Parties to this Convention is at or above a level of 625,000 units, this percentage shall be increased by one percentage point. It shall be increased by one additional percentage point for each increment of 75,000 units by which the capacity exceeds 625,000 units.

2. The formula is for each nuclear reactor situated in the territory of the Contracting Party, one unit for each megawatt of thermal power. The formula shall be calculated on the basis of the thermal power of the nuclear reactors shown at the date of the nuclear incident in the list established and kept up to date in accordance with article VIII.

3. For the purpose of calculating the contributions, a nuclear reactor shall be taken into account from that date when nuclear fuel elements have been first loaded into the nuclear reactor. A nuclear reactor shall be excluded from the calculation when all fuel elements have been removed permanently from the reactor core and have been stored safely in accordance with approved procedures.

## *Article V*

### GEOGRAPHICAL SCOPE

1. The funds provided for under article III.1(b) shall apply to nuclear damage which is suffered:

- (a) In the territory of a Contracting Party; or
- (b) In or above maritime areas beyond the territorial sea of a Contracting Party:
  - (i) On board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party; or
  - (ii) By a national of a Contracting Party;

excluding damage suffered in or above the territorial sea of a State not Party to this Convention; or

(c) In or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf;

provided that the courts of a Contracting Party have jurisdiction pursuant to article XIII.

2. Any signatory or acceding State may, at the time of signature of or accession to this Convention or on the deposit of its instrument of ratification, declare that for the purposes of the application of paragraph 1(b)(ii), individuals or certain categories thereof, considered under its law as having their habitual residence in its territory, are assimilated to its own nationals.

3. In this article, the expression "a national of a Contracting Party" shall include a Contracting Party or any of its constituent subdivisions, or a partnership, or any public or private body whether corporate or not established in the territory of a Contracting Party.

## CHAPTER III

### ORGANIZATION OF SUPPLEMENTARY FUNDING

## *Article VI*

### NOTIFICATION OF NUCLEAR DAMAGE

Without prejudice to obligations which Contracting Parties may have under other international agreements, the Contracting Party whose courts have jurisdiction shall inform the other Contracting Parties of a nuclear incident as soon as it appears that the damage caused by such incident exceeds, or is likely to exceed, the amount available under article III.1(a) and that contributions under article III.1(b) may be required. The Contracting Parties shall without delay make all the necessary arrangements to settle the procedure for their relations in this connection.

## *Article VII*

### CALL FOR FUNDS

1. Following the notification referred to in article VI, and subject to article X.3, the Contracting Party whose courts have jurisdiction shall request the other Contracting Parties to make available the public funds required under article III.1(b) to the extent and when they are actually required and shall have exclusive competence to disburse such funds.

2. Independently of existing or future regulations concerning currency or transfers, Contracting Parties shall authorize the transfer and payment of any contribution provided pursuant to article III.1(b) without any restriction.

## *Article VIII*

### LIST OF NUCLEAR INSTALLATIONS

1. Each Contracting State shall, at the time when it deposits its instrument of ratification, acceptance, approval or accession, communicate to the depositary a complete listing of all nuclear installations referred to in article IV.3. The listing shall contain the necessary particulars for the purpose of the calculation of contributions.

2. Each Contracting State shall promptly communicate to the depositary all modifications to be made to the list. Where such modifications include the addition of a nuclear installation, the communication must be made at least three months before the expected date when nuclear material will be introduced into the installation.

3. If a Contracting Party is of the opinion that the particulars, or any modification to be made to the list communicated by a Contracting State pursuant to paragraphs 1 and 2, do not comply with the provisions, it may raise objections thereto by addressing them to the depositary within three months from the date on which it has received notice pursuant to paragraph 5. The depositary shall forthwith communicate this objection to the State to whose information the objection has been raised. Any unresolved differences shall be dealt with in accordance with the dispute settlement procedure laid down in article XVI.

4. The depositary shall maintain, update and annually circulate to all Contracting States the list of nuclear installations established in accordance with this article. Such list shall consist of all the particulars and modifications referred to in this article, it being understood that objections submitted under this article shall have effect retrospective to the date on which they were raised, if they are sustained.

5. The depositary shall give notice as soon as possible to each Contracting Party of the communications and objections which it has received pursuant to this article.

## *Article IX*

### RIGHTS OF RECOURSE

1. Each Contracting Party shall enact legislation in order to enable both the Contracting Party in whose territory the nuclear installation of the operator liable

is situated and the other Contracting Parties who have paid contributions referred to in article III.1(b) to benefit from the operator's right of recourse to the extent that he has such a right under either one of the Conventions referred to in article I or national legislation mentioned in article II.1(b) and to the extent that contributions have been made by any of the Contracting Parties.

2. The legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated may provide for the recovery of public funds made available under this Convention from such operator if the damage results from fault on his part.

3. The Contracting Party whose courts have jurisdiction may exercise the rights of recourse provided for in paragraphs 1 and 2 on behalf of the other Contracting Parties which have contributed.

### *Article X*

#### DISBURSEMENTS, PROCEEDINGS

1. The system of disbursements by which the funds required under article III.1 are to be made available and the system of apportionment thereof shall be that of the Contracting Party whose courts have jurisdiction.

2. Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation and that Contracting Parties may intervene in the proceedings against the operator liable.

3. No Contracting Party shall be required to make available the public funds referred to in article III.1(b) if claims for compensation can be satisfied out of the funds referred to in article III.1(a).

### *Article XI*

#### ALLOCATION OF FUNDS

The funds provided under article III.1(b) shall be distributed as follows:

1. (a) 50 per cent of the funds shall be available to compensate claims for nuclear damage suffered in or outside the Installation State;

(b) 50 per cent of the funds shall be available to compensate claims for nuclear damage suffered outside the territory of the Installation State to the extent that such claims are uncompensated under subparagraph (a).

(c) In the event the amount provided pursuant to article III.1(a) is less than 300 million SDRs:

(i) The amount in paragraph 1(a) shall be reduced by the same percentage as the percentage by which the amount provided pursuant to article III.1(a) is less than 300 million SDRs; and

(ii) The amount in paragraph 1(b) shall be increased by the amount of the reduction calculated pursuant to subparagraph (i).

2. If a Contracting Party, in accordance with article III.1(a), has ensured the availability without discrimination of an amount not less than 600 million SDRs, which has been specified to the depositary prior to the nuclear incident, all funds referred to in article III.1(a) and (b) shall, notwithstanding paragraph 1, be

made available to compensate nuclear damage suffered in and outside the Installation State.

## CHAPTER IV

### EXERCISE OF OPTIONS

#### *Article XII*

1. Except insofar as this Convention otherwise provides, each Contracting Party may exercise the powers vested in it by virtue of the Vienna Convention or the Paris Convention, and any provisions made thereunder may be invoked against the other Contracting Parties in order that the public funds referred to in article III.1(b) be made available.

2. Nothing in this Convention shall prevent any Contracting Party from making provisions outside the scope of the Vienna or the Paris Convention and of this Convention, provided that such provision shall not involve any further obligation on the part of the other Contracting Parties, and provided that damage in a Contracting Party having no nuclear installations within its territory shall not be excluded from such further compensation on any grounds of lack of reciprocity.

3. (a) Nothing in this Convention shall prevent Contracting Parties from entering into regional or other agreements with the purpose of implementing their obligations under article III.1(a) or providing additional funds for the compensation of nuclear damage, provided that this shall not involve any further obligation under this Convention for the other Contracting Parties.

(b) A Contracting Party intending to enter into any such agreement shall notify all other Contracting Parties of its intention. Agreements concluded shall be notified to the depositary.

## CHAPTER V

### JURISDICTION AND APPLICABLE LAW

#### *Article XIII*

#### JURISDICTION

1. Except as otherwise provided in this article, jurisdiction over actions concerning nuclear damage from a nuclear incident shall lie only with the courts of the Contracting Party within which the nuclear incident occurs.

2. Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone, were one to be established by that Party, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party. The preceding sentence shall apply if that Contracting Party has notified the depositary of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction in a manner which is contrary to the international law of the sea, including the United Nations Convention on the Law of the Sea. However, if the exercise of such jurisdiction is inconsistent with the obligations of that Party under article XI of the

Vienna Convention or article 13 of the Paris Convention in relation to a State not Party to this Convention, jurisdiction shall be determined according to those provisions.

3. Where a nuclear incident does not occur within the territory of any Contracting Party or within an area notified pursuant to paragraph 2, or where the place of a nuclear incident cannot be determined with certainty, jurisdiction over actions concerning nuclear damage from the nuclear incident shall lie only with the courts of the Installation State.

4. Where jurisdiction over actions concerning nuclear damage would lie with the courts of more than one Contracting Party, these Contracting Parties shall determine by agreement which Contracting Party's courts shall have jurisdiction.

5. A judgement that is no longer subject to ordinary forms of review entered by a court of a Contracting Party having jurisdiction shall be recognized except:

(a) Where the judgement was obtained by fraud;

(b) Where the party against whom the judgement was pronounced was not given a fair opportunity to present his case; or

(c) Where the judgement is contrary to the public policy of the Contracting Party within the territory of which recognition is sought, or is not in accord with fundamental standards of justice.

6. A judgement which is recognized under paragraph 5 shall, upon being presented for enforcement in accordance with the formalities required by the law of the Contracting Party where enforcement is sought, be enforceable as if it were a judgement of a court of that Contracting Party. The merits of a claim on which the judgement has been given shall not be subject to further proceedings.

7. Settlements effected in respect of the payment of compensation out of the public funds referred to in article III.1(b) in accordance with the conditions established by national legislation shall be recognized by the other Contracting Parties.

#### *Article XIV*

##### APPLICABLE LAW

1. Either the Vienna Convention or the Paris Convention or the annex to this Convention, as appropriate, shall apply to a nuclear incident to the exclusion of the others.

2. Subject to the provisions of this Convention, the Vienna Convention or the Paris Convention, as appropriate, the applicable law shall be the law of the competent court.

#### *Article XV*

##### PUBLIC INTERNATIONAL LAW

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.



## CHAPTER VI

### DISPUTE SETTLEMENT

#### *Article XVI*

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to the settlement of the dispute by negotiation or by any other peaceful means of settling disputes acceptable to them.

2. If a dispute of this character referred to in paragraph 1 cannot be settled within six months from the request for consultation pursuant to paragraph 1, it shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In cases of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. When ratifying, accepting, approving or acceding to this Convention, a State may declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other Contracting Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2 with respect to a Contracting Party for which such a declaration is in force.

4. A Contracting Party which has made a declaration in accordance with paragraph 3 may at any time withdraw it by notification to the depositary.

## CHAPTER VII

### FINAL CLAUSES

#### *Article XVII*

##### SIGNATURE

This Convention shall be open for signature, by all States at the headquarters of the International Atomic Energy Agency in Vienna from 29 September 1997 until its entry into force.

#### *Article XVIII*

##### RATIFICATION, ACCEPTANCE, APPROVAL

1. This Convention shall be subject to ratification, acceptance or approval by the signatory States. An instrument of ratification, acceptance or approval shall be accepted only from a State which is a Party to either the Vienna Convention or the Paris Convention or a State which declares that its national law complies with the provisions of the annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Con-

vention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director General of the International Atomic Energy Agency, who shall act as the depositary of this Convention.

3. A Contracting Party shall provide the depositary with a copy, in one of the official languages of the United Nations, of the provisions of its national law referred to in article II.1 and amendments thereto, including any specification made pursuant to article III.1(a), article XI.2, or a transitional amount pursuant to article III.1(a)(ii). Copies of such provisions shall be circulated by the depositary to all other Contracting Parties.

### *Article XIX*

#### ACCESSION

1. After its entry into force, any State which has not signed this Convention may accede to it. An instrument of accession shall be accepted only from a State which is a party to either the Vienna Convention or the Paris Convention, or a State which declares that its national law complies with the provisions of the annex to this Convention, provided that, in the case of a State having on its territory a nuclear installation as defined in the Convention on Nuclear Safety of 17 June 1994, it is a Contracting State to that Convention.

2. The instruments of accession shall be deposited with the Director General of the International Atomic Energy Agency.

3. A Contracting Party shall provide the depositary with a copy, in one of the official languages of the United Nations, of the provisions of its national law referred to in article II.1 and amendments thereto, including any specification made pursuant to article III.1(a), article XI.2, or a transitional amount pursuant to article III.1(a)(ii). Copies of such provisions shall be circulated by the depositary to all other Contracting Parties.

### *Article XX*

#### ENTRY INTO FORCE

1. This Convention shall come into force on the ninetieth day following the date on which at least five States with a minimum of 400,000 units of installed nuclear capacity have deposited an instrument referred to in article XVIII.

2. For each State which subsequently ratifies, accepts, approves or accedes to this Convention, it shall enter into force on the ninetieth day after the deposit by such State of the appropriate instrument.

### *Article XXI*

#### DENUNCIATION

1. Any Contracting Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one year after the date on which the notification is received by the depositary.

### *Article XXII*

#### CESSATION

1. Any Contracting Party which ceases to be a party to either the Vienna Convention or the Paris Convention shall notify the depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention unless its national law complies with the provisions of the annex to this Convention and it has so notified the depositary and provided it with a copy of the provisions of its national law in one of the official languages of the United Nations. Such copy shall be circulated by the depositary to all other Contracting Parties.

2. Any Contracting Party whose national law ceases to comply with the provisions of the annex to this Convention and which is not a party to either the Vienna Convention or the Paris Convention shall notify the depositary thereof and of the date of such cessation. On that date such Contracting Party shall have ceased to be a Party to this Convention.

3. Any Contracting Party having on its territory a nuclear installation as defined in the Convention on Nuclear Safety which ceases to be party to that Convention shall notify the depositary thereof and of the date of such cessation. On that date, such Contracting Party shall, notwithstanding paragraphs 1 and 2, have ceased to be a Party to the present Convention.

### *Article XXIII*

#### CONTINUANCE OF PRIOR RIGHTS AND OBLIGATIONS

Notwithstanding denunciation pursuant to article XXI or cessation pursuant to article XXII, the provisions of this Convention shall continue to apply to any nuclear damage caused by a nuclear incident which occurs before such denunciation or cessation.

### *Article XXIV*

#### REVISION AND AMENDMENTS

1. The depositary, after consultations with the Contracting Parties, may convene a conference for the purpose of revising or amending this Convention.

2. The depositary shall convene a conference of Contracting Parties for the purpose of revising or amending this Convention at the request of not less than one third of all Contracting Parties.

### *Article XXV*

#### AMENDMENT BY SIMPLIFIED PROCEDURE

1. A meeting of the Contracting Parties shall be convened by the depositary to amend the compensation amounts referred to in article III.1(a) and (b) or

categories of installations including contributions payable for them, referred to in article IV.3, if one third of the Contracting Parties express a desire to that effect.

2. Decisions to adopt a proposed amendment shall be taken by vote. Amendments shall be adopted if no negative vote is cast.

3. Any amendment adopted in accordance with paragraph 2 shall be notified by the depositary to all Contracting Parties. The amendment shall be considered accepted if within a period of 36 months after it has been notified, all Contracting Parties at the time of the adoption of the amendment have communicated their acceptance to the depositary. The amendment shall enter into force for all Contracting Parties 12 months after its acceptance.

4. If within a period of 36 months from the date of notification for acceptance the amendment has not been accepted in accordance with paragraph 3, the amendment shall be considered rejected.

5. When an amendment has been adopted in accordance with paragraph 2 but the 36-month period for its acceptance has not yet expired, a State which becomes a Party to this Convention during that period shall be bound by the amendment if it comes into force. A State which becomes a Party to this Convention after that period shall be bound by any amendment which has been accepted in accordance with paragraph 3. In the cases referred to in the present paragraph, a Contracting Party shall be bound by an amendment when that amendment enters into force, or when this Convention enters into force for that Contracting Party, whichever date is the later.

#### *Article XXVI*

##### FUNCTIONS OF THE DEPOSITARY

In addition to functions in other articles of this Convention, the depositary shall promptly notify Contracting Parties and all other States as well as the Secretary-General of the Organization for Economic Cooperation and Development of:

- (a) Each signature of this Convention;
- (b) Each deposit of an instrument of ratification, acceptance, approval or accession concerning this Convention;
- (c) The entry into force of this Convention;
- (d) Declarations received pursuant to article XVI;
- (e) Any denunciation received pursuant to article XXI, or notification received pursuant to article XXII;
- (f) Any notification under paragraph 2 of article XIII;
- (g) Other pertinent notifications relating to this Convention.

#### *Article XXVII*

##### AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with

the Director General of the International Atomic Energy Agency, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Vienna, this twelfth day of September, one thousand nine hundred ninety-seven.

## ANNEX

A Contracting Party which is not party to any of the Conventions mentioned in article I(a) or (b) of this Convention shall ensure that its national legislation is consistent with the provisions laid down in this annex insofar as those provisions are not directly applicable within that Contracting Party. A Contracting Party having no nuclear installation on its territory is required to have only that legislation which is necessary to enable such a Party to give effect to its obligations under this Convention.

### *Article I*

#### DEFINITIONS

1. In addition to the definitions in article I of this Convention, the following definitions apply for the purposes of this annex:

(a) "Nuclear fuel" means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission;

(b) "Nuclear installation" means:

- (i) Any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose;
- (ii) Any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the reprocessing of irradiated nuclear fuel; and
- (iii) Any facility where nuclear material is stored, other than storage incidental to the carriage of such material, provided that the Installation State may determine that several nuclear installations of one operator which are located at the same site shall be considered as a single nuclear installation;

(c) "Nuclear material" means:

- (i) Nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and

(ii) Radioactive products or waste;

(d) "Operator", in relation to a nuclear installation, means the person designated or recognized by the Installation State as the operator of that installation;

(e) "Radioactive products or waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.

2. An Installation State may, if the small extent of the risks involved so warrants, exclude any nuclear installation or small quantities of nuclear material from the application of this Convention, provided that:

(a) With respect to nuclear installations, criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State satisfies such criteria; and

(b) With respect to small quantities of nuclear material, maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency and any exclusion by an Installation State is within such established limits.

The criteria for the exclusion of nuclear installations and the maximum limits for the exclusion of small quantities of nuclear material shall be reviewed periodically by the Board of Governors.

## *Article 2*

### CONFORMITY OF LEGISLATION

1. The national law of a Contracting Party is deemed to be in conformity with the provisions of articles 3, 4, 5 and 7 if it contained on 1 January 1995 and continues to contain provisions that:

(a) Provide for strict liability in the event of a nuclear incident where there is substantial nuclear damage off the site of the nuclear installation where the incident occurs;

(b) Require the indemnification of any person other than the operator liable for nuclear damage to the extent that person is legally liable to provide compensation; and

(c) Ensure the availability of at least 1,000 million SDRs in respect of a civil nuclear power plant and at least 300 million SDRs in respect of other civil nuclear installations for such indemnification.

2. If, in accordance with paragraph 1, the national law of a Contracting Party is deemed to be in conformity with the provisions of articles 3, 4, 5 and 7, then that Party:

(a) May apply a definition of nuclear damage that covers loss or damage set forth in article 1(f) of this Convention and any other loss or damage to the extent that the loss or damage arises out of or results from the radioactive properties, or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation; or other ionizing radiation emitted by any source of radiation inside a nuclear installation, provided that such application does not affect the undertaking by that Contracting Party pursuant to article III of this Convention; and

(b) May apply the definition of nuclear installation in paragraph 3 of this article to the exclusion of the definition in article 1.1(b) of this annex.

3. For the purpose of paragraph 2(b) of this article, "nuclear installation" means:

(a) Any civil nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or any other purpose; and

(b) Any civil facility for processing, reprocessing or storing:

(i) Irradiated nuclear fuel; or

(ii) Radioactive products or waste that:

(1) Result from the reprocessing of irradiated nuclear fuel and contain significant amounts of fission products; or

(2) Contain elements that have an atomic number greater than 92 in concentrations greater than 10 nano-curies per gram.

(c) Any other civil facility for processing, reprocessing or storing nuclear material unless the Contracting Party determines the small extent of the risks involved with such an installation warrants the exclusion of such a facility from this definition.

4. Where that national law of a Contracting Party which is in compliance with paragraph 1 of this article does not apply to a nuclear incident which occurs outside the territory of that Contracting Party, but over which the courts of that Contracting Party have jurisdiction pursuant to article XIII of this Convention, articles 3 to 11 of the annex shall apply and prevail over any inconsistent provisions of the applicable national law.

## *Article 3*

### OPERATOR LIABILITY

1. The operator of a nuclear installation shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident:

(a) In that nuclear installation; or

(b) Involving nuclear material coming from or originating in that nuclear installation, and occurring:

- (i) Before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by the operator of another nuclear installation;
- (ii) In the absence of such express terms, before the operator of another nuclear installation has taken charge of the nuclear material; or
- (iii) Where the nuclear material is intended to be used in a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose, before the person duly authorized to operate such reactor has taken charge of the nuclear material; but
- (iv) Where the nuclear material has been sent to a person within the territory of a non-Contracting State, before it has been unloaded from the means of transport by which it has arrived in the territory of that non-Contracting State;
- (c) Involving nuclear material sent to that nuclear installation, and occurring:
  - (i) After liability with regard to nuclear incidents involving the nuclear material has been assumed by the operator pursuant to the express terms of a contract in writing, from the operator of another nuclear installation;
  - (ii) In the absence of such express terms, after the operator has taken charge of the nuclear material; or
  - (iii) After the operator has taken charge of the nuclear material from a person operating a nuclear reactor with which a means of transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose; but
  - (iv) Where the nuclear material has, with the written consent of the operator, been sent from a person within the territory of a non-Contracting State, only after it has been loaded on the means of transport by which it is to be carried from the territory of that State;

provided that, if nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving nuclear material stored therein incidentally to the carriage of such material, the provisions of subparagraph (a) shall not apply where another operator or person is solely liable pursuant to subparagraph (b) or (c).

2. The Installation State may provide by legislation that, in accordance with such terms as may be specified in that legislation, a carrier of nuclear material or a person handling radioactive waste may, at such carrier or such person's request and with the consent of the operator concerned, be designated or recognized as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In this case such carrier or such person shall be considered, for all the purposes of this Convention, as an operator of a nuclear installation situated within the territory of that State.

3. The liability of the operator for nuclear damage shall be absolute.

4. Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage, be deemed to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by the provisions of this annex and by an emission of ionizing radiation not covered by it, nothing in this annex shall limit or otherwise affect the liability, either as regards any person suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

5. (a) No liability shall attach to an operator for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war or insurrection.

(b) Except insofar as the law of the Installation State may provide to the contrary, the operator shall not be liable for nuclear damage caused by a nuclear incident caused directly due to a grave natural disaster of an exceptional character.

6. National law may relieve an operator wholly or partly from the obligation to pay compensation for nuclear damage suffered by a person if the operator proves the nuclear damage resulted wholly or partly from the gross negligence of that person or an act or omission of that person done with the intent to cause damage.

7. The operator shall not be liable for nuclear damage:

(a) To the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(b) To any property on that same site which is used or to be used in connection with any such installation;

(c) Unless otherwise provided by national law, to the means of transport upon which the nuclear material involved was at the time of the nuclear incident. If national law provides that the operator is liable for such damage, compensation for that damage shall not have the effect of reducing the liability of the operator in respect of other damage to an amount less than either 150 million SDRs, or any higher amount established by the legislation of a Contracting Party.

8. Nothing in this Convention shall affect the liability outside this Convention of the operator for nuclear damage for which by virtue of paragraph 7(c) he is not liable under this Convention.

9. The right to compensation for nuclear damage may be exercised only against the operator liable, provided that national law may permit a direct right of action against any supplier of funds that are made available pursuant to provisions in national law to ensure compensation through the use of funds from sources other than the operator.

10. The operator shall incur no liability for damage caused by a nuclear incident outside the provisions of national law in accordance with this Convention.

### *Article 4*

#### LIABILITY AMOUNTS

1. Subject to article III.1(a)(ii), the liability of the operator may be limited by the Installation State for any one nuclear incident, either:

(a) To not less than 300 million SDRs; or

(b) To not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds shall be made available by that State to compensate nuclear damage.

2. Notwithstanding paragraph 1, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event shall any amount so established be less than 5 million SDRs, and provided that the Installation State ensures that public funds shall be made available up to the amount established pursuant to paragraph 1.

3. The amounts established by the Installation State of the liable operator in accordance with paragraphs 1 and 2, as well as the provisions of any legislation of a Contracting Party pursuant to article 3.7(c), shall apply wherever the nuclear incident occurs.

### *Article 5*

#### FINANCIAL SECURITY

1. (a) The operator shall be required to have and maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to article 4. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable provided that such limit is not lower than 300 million SDRs. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph.

(b) Notwithstanding subparagraph (a), the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event shall any amount so established be less than



5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided in subparagraph (a).

2. Nothing in paragraph 1 shall require a Contracting Party or any of its constituent subdivisions to maintain insurance or other financial security to cover their liability as operators.

3. The funds provided by insurance, by other financial security or by the Installation State pursuant to paragraph 1 or article 4.1(b) shall be exclusively available for compensation due under this annex.

4. No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided pursuant to paragraph 1 without giving notice in writing of at least two months to the competent public authority or, insofar as such insurance or other financial security relates to the carriage of nuclear material, during the period of the carriage in question.

## *Article 6*

### CARRIAGE

1. With respect to a nuclear incident during carriage, the maximum amount of liability of the operator shall be governed by the national law of the Installation State.

2. A Contracting Party may subject carriage of nuclear material through its territory to the condition that the amount of liability of the operator be increased to an amount not to exceed the maximum amount of liability of the operator of a nuclear installation situated in its territory.

3. The provisions of paragraph 2 shall not apply to:

(a) Carriage by sea where, under international law, there is a right of entry in cases of urgent distress into ports of a Contracting Party or a right of innocent passage through its territory;

(b) Carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of a Contracting Party.

## *Article 7*

### LIABILITY OF MORE THAN ONE OPERATOR

1. Where nuclear damage engages the liability of more than one operator, the operators involved shall, insofar as the damage attributable to each operator is not reasonably separable, be jointly and severally liable. The Installation State may limit the amount of public funds made available per incident to the difference, if any, between the amounts hereby established and the amount established pursuant to article 4.1.

2. Where a nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, and causes nuclear damage which engages the liability of more than one operator, the total liability shall not exceed the highest amount applicable with respect to any one of them pursuant to article 4.

3. In neither of the cases referred to in paragraphs 1 and 2 shall the liability of any one operator exceed the amount applicable with respect to him pursuant to article 4.

4. Subject to the provisions of paragraphs 1 to 3, where several nuclear installations of one and the same operator are involved in one nuclear incident, such operator shall be liable in respect of each nuclear installation involved up to the amount applicable with respect to him pursuant to article 4. The Installation State may limit the amount of public funds made available as provided for in paragraph 1.

## *Article 8*

### COMPENSATION UNDER NATIONAL LAW

1. For purposes of this Convention, the amount of compensation shall be determined without regard to any interest or costs awarded in a proceeding for compensation of nuclear damage.

2. Compensation for damage suffered outside the Installation State shall be provided in a form freely transferable among Contracting Parties.

3. Where provisions of national or public health insurance, social insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries of such systems and rights of recourse by virtue of such systems shall be determined by the national law of the Contracting Party in which such systems have been established or by the regulations of the intergovernmental organization which has established such systems.

## *Article 9*

### PERIOD OF EXTINCTION

1. Rights of compensation under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident. If, however, under the law of the Installation State the liability of the operator is covered by insurance or other financial security or by State funds for a period longer than ten years, the law of the competent court may provide that rights of compensation against the operator shall only be extinguished after a period which may be longer than ten years, but shall not be longer than the period for which his liability is so covered under the law of the Installation State.

2. Where nuclear damage is caused by a nuclear incident involving nuclear material which at the time of the nuclear incident was stolen, lost, jettisoned or abandoned, the period established pursuant to paragraph 1 shall be computed from the date of that nuclear incident, but the period shall in no case, subject to legislation pursuant to paragraph 1, exceed a period of twenty years from the date of the theft, loss, jettison or abandonment.

3. The law of the competent court may establish a period of extinction or prescription of not less than three years from the date on which the person suffering nuclear damage had knowledge or should have had knowledge of the damage and of the operator liable for the damage, provided that the period established pursuant to paragraphs 1 and 2 shall not be exceeded.

4. If the national law of a Contracting Party provides for a period of extinction or prescription greater than ten years from the date of a nuclear incident, it shall contain provisions for the equitable and timely satisfaction of claims for loss of life or personal injury filed within ten years from the date of the nuclear incident.

## *Article 10*

### RIGHT OF RECOURSE

National law may provide that the operator shall have a right of recourse only:

- (a) If this is expressly provided for by a contract in writing; or
- (b) If the nuclear incident results from an act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent.

## *Article 11*

### APPLICABLE LAW

Subject to the provisions of this Convention, the nature, form, extent and equitable distribution of compensation for nuclear damage caused by a nuclear incident shall be governed by the law of the competent court.

- (c) Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.<sup>18</sup> Done at Vienna on 29 September 1997<sup>19</sup>

## PREAMBLE

The Contracting Parties,

(i) *Recognizing* that the operation of nuclear reactors generates spent fuel and radioactive waste and that other applications of nuclear technologies also generate radioactive waste;

(ii) *Recognizing* that the same safety objectives apply both to spent fuel and radioactive waste management;

(iii) *Reaffirming* the importance to the international community of ensuring that sound practices are planned and implemented for the safety of spent fuel and radioactive waste management;

(iv) *Recognizing* the importance of informing the public on issues regarding the safety of spent fuel and radioactive waste management;

(v) *Desiring* to promote an effective nuclear safety culture worldwide;

(vi) *Reaffirming* that the ultimate responsibility for ensuring the safety of spent fuel and radioactive waste management rests with the State;

(vii) *Recognizing* that the definition of a fuel cycle policy rests with the State, some States considering spent fuel as a valuable resource that may be re-processed, others electing to dispose of it;

(viii) *Recognizing* that spent fuel and radioactive waste excluded from the present Convention because they are within military or defence programmes should be managed in accordance with the objectives stated in this Convention;

(ix) *Affirming* the importance of international cooperation in enhancing the safety of spent fuel and radioactive waste management through bilateral and multilateral mechanisms, and through this incentive Convention;

(x) *Mindful* of the needs of developing countries, and in particular the least developed countries, and of States with economies in transition and of the need to facilitate existing mechanisms to assist in the fulfilment of their rights and obligations set out in this incentive Convention;

(xi) *Convinced* that radioactive waste should, as far as is compatible with the safety of the management of such material, be disposed of in the State in which it was generated, whilst recognizing that, in certain circumstances, safe and efficient management of spent fuel and radioactive waste might be fostered through agreements among Contracting Parties to use facilities in one of them for the benefit of the other Parties, particularly where waste originates from joint projects;

(xii) *Recognizing* that any State has the right to ban import into its territory of foreign spent fuel and radioactive waste;

(xiii) *Keeping in mind* the Convention on Nuclear Safety (1994), the Convention on Early Notification of a Nuclear Accident (1986), the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986), the Convention on the Physical Protection of Nuclear Material (1980), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter as amended (1994) and other relevant international instruments;

(xiv) *Keeping in mind* the principles contained in the inter-agency “International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources” (1996), in the IAEA Safety Fundamentals entitled “The Principles of Radioactive Waste Management” (1995), and in the existing international standards relating to the safety of the transport of radioactive materials;

(xv) *Recalling* chapter 22 of Agenda 21 adopted in 1992 by the United Nations Conference on Environment and Development in Rio de Janeiro, which reaffirms the paramount importance of the safe and environmentally sound management of radioactive waste;

(xvi) *Recognizing* the desirability of strengthening the international control system applying specifically to radioactive materials as referred to in article 1(3) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989);

*Have agreed* as follows:

## CHAPTER 1. OBJECTIVES, DEFINITIONS AND SCOPE OF APPLICATION

### *Article 1. Objectives*

The objectives of this Convention are:

(i) To achieve and maintain a high level of safety worldwide in spent fuel and radioactive waste management, through the enhancement of national measures and international cooperation, including, where appropriate, safety-related technical cooperation;

(ii) To ensure that during all stages of spent fuel and radioactive waste management there are effective defences against potential hazards so that individuals, society and the environment are protected from harmful effects of ionizing radiation, now and in the future, in such a way that the needs and aspirations of the present generation are met without compromising the ability of future generations to meet their needs and aspirations;

(iii) To prevent accidents with radiological consequences and to mitigate their consequences should they occur during any stage of spent fuel or radioactive waste management.

### *Article 2. Definitions*

For the purposes of this Convention:

(a) “closure” means the completion of all operations at some time after the emplacement of spent fuel or radioactive waste in a disposal facility. This includes the final engineering or other work required to bring the facility to a condition that will be safe in the long term;

(b) “decommissioning” means all steps leading to the release of a nuclear facility, other than a disposal facility, from regulatory control. These steps include the processes of decontamination and dismantling;

(c) “discharges” means planned and controlled releases into the environment, as a legitimate practice, within limits authorized by the regulatory body, of

liquid or gaseous radioactive materials that originate from regulated nuclear facilities during normal operation;

(d) “disposal” means the emplacement of spent fuel or radioactive waste in an appropriate facility without the intention of retrieval;

(e) “licence” means any authorization, permission or certification granted by a regulatory body to carry out any activity related to management of spent fuel or of radioactive waste;

(f) “nuclear facility” means a civilian facility and its associated land, buildings and equipment in which radioactive materials are produced, processed, used, handled, stored or disposed of on such a scale that consideration of safety is required;

(g) “operating lifetime” means the period during which a spent fuel or a radioactive waste management facility is used for its intended purpose. In the case of a disposal facility, the period begins when spent fuel or radioactive waste is first emplaced in the facility and ends upon closure of the facility;

(h) “radioactive waste” means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the Contracting Party or by a natural or legal person whose decision is accepted by the Contracting Party, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the Contracting Party;

(i) “radioactive waste management” means all activities, including decommissioning activities, that relate to the handling, pretreatment, treatment, conditioning, storage or disposal of radioactive waste, excluding off-site transportation. It may also involve discharges;

(j) “radioactive waste management facility” means any facility or installation the primary purpose of which is radioactive waste management, including a nuclear facility in the process of being decommissioned only if it is designated by the Contracting Party as a radioactive waste management facility;

(k) “regulatory body” means any body or bodies given the legal authority by the Contracting Party to regulate any aspect of the safety of spent fuel or radioactive waste management including the granting of licences;

(l) “reprocessing” means a process or operation, the purpose of which is to extract radioactive isotopes from spent fuel for further use;

(m) “sealed source” means radioactive material that is permanently sealed in a capsule or closely bonded and in a solid form, excluding reactor fuel elements;

(n) “spent fuel” means nuclear fuel that has been irradiated in and permanently removed from a reactor core;

(o) “spent fuel management” means all activities that relate to the handling or storage of spent fuel, excluding off-site transportation. It may also involve discharges;

(p) “spent fuel management facility” means any facility or installation the primary purpose of which is spent fuel management;

(q) “State of destination” means a State to which a transboundary movement is planned or takes place;

(r) “State of origin” means a State from which a transboundary movement is planned to be initiated or is initiated;

(s) "State of transit" means any State, other than a State of origin or a State of destination, through whose territory a transboundary movement is planned or takes place;

(t) "storage" means the holding of spent fuel or of radioactive waste in a facility that provides for its containment, with the intention of retrieval;

(u) "transboundary movement" means any shipment of spent fuel or of radioactive waste from a State of origin to a State of destination.

### *Article 3. Scope of application*

1. This Convention shall apply to the safety of spent fuel management when the spent fuel results from the operation of civilian nuclear reactors. Spent fuel held at reprocessing facilities as part of a reprocessing activity is not covered in the scope of this Convention unless the Contracting Party declares reprocessing to be part of spent fuel management.

2. This Convention shall also apply to the safety of radioactive waste management when the radioactive waste results from civilian applications. However, this Convention shall not apply to waste that contains only naturally occurring radioactive materials and that does not originate from the nuclear fuel cycle, unless it constitutes a disused sealed source or it is declared as radioactive waste for the purposes of this Convention by the Contracting Party.

3. This Convention shall not apply to the safety of management of spent fuel or radioactive waste within military or defence programmes, unless declared as spent fuel or radioactive waste for the purposes of this Convention by the Contracting Party. However, this Convention shall apply to the safety of management of spent fuel and radioactive waste from military or defence programmes if and when such materials are transferred permanently to and managed within exclusively civilian programmes.

4. This Convention shall also apply to discharges as provided for in articles 4, 7, 11, 14, 24 and 26.

## CHAPTER 2. SAFETY OF SPENT FUEL MANAGEMENT

### *Article 4. General safety requirements*

Each Contracting Party shall take the appropriate steps to ensure that at all stages of spent fuel management, individuals, society and the environment are adequately protected against radiological hazards.

In so doing, each Contracting Party shall take the appropriate steps to:

(i) Ensure that criticality and removal of residual heat generated during spent fuel management are adequately addressed;

(ii) Ensure that the generation of radioactive waste associated with spent fuel management is kept to the minimum practicable, consistent with the type of fuel cycle policy adopted;

(iii) Take into account interdependencies among the different steps in spent fuel management;

(iv) Provide for effective protection of individuals, society and the environment, by applying at the national level suitable protective methods as approved by the regulatory body, in the framework of its national legislation which has due regard to internationally endorsed criteria and standards;

(v) Take into account the biological, chemical and other hazards that may be associated with spent fuel management;

(vi) Strive to avoid actions that impose reasonably predictable impacts on future generations greater than those permitted for the current generation;

(vii) Aim to avoid imposing undue burdens on future generations.

#### *Article 5. Existing facilities*

Each Contracting Party shall take the appropriate steps to review the safety of any spent fuel management facility existing at the time the Convention enters into force for that Contracting Party and to ensure that, if necessary, all reasonably practicable improvements are made to upgrade the safety of such a facility.

#### *Article 6. Siting of proposed facilities*

1. Each Contracting Party shall take the appropriate steps to ensure that procedures are established and implemented for a proposed spent fuel management facility:

(i) To evaluate all relevant site-related factors likely to affect the safety of such a facility during its operating lifetime;

(ii) To evaluate the likely safety impact of such a facility on individuals, society and the environment;

(iii) To make information on the safety of such a facility available to members of the public;

(iv) To consult Contracting Parties in the vicinity of such a facility, insofar as they are likely to be affected by that facility, and provide them, upon their request, with general data relating to the facility to enable them to evaluate the likely safety impact of the facility upon their territory.

2. In so doing, each Contracting Party shall take the appropriate steps to ensure that such facilities shall not have unacceptable effects on other Contracting Parties by being sited in accordance with the general safety requirements of article 4.

#### *Article 7. Design and construction of facilities*

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The design and construction of a spent fuel management facility provide for suitable measures to limit possible radiological impacts on individuals, society and the environment, including those from discharges or uncontrolled releases;

(ii) At the design stage, conceptual plans and, as necessary, technical provisions for the decommissioning of a spent fuel management facility are taken into account;

(iii) The technologies incorporated in the design and construction of a spent fuel management facility are supported by experience, testing or analysis.

#### *Article 8. Assessment of safety of facilities*

Each Contracting Party shall take the appropriate steps to ensure that:

(i) Before construction of a spent fuel management facility, a systematic safety assessment and an environmental assessment appropriate to the hazard presented by the facility and covering its operating lifetime shall be carried out;

(ii) Before the operation of a spent fuel management facility, updated and detailed versions of the safety assessment and of the environmental assessment shall be prepared when deemed necessary to complement the assessments referred to in subparagraph (i).

#### *Article 9. Operation of facilities*

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The licence to operate a spent fuel management facility is based upon appropriate assessments as specified in article 8 and is conditional on the completion of a commissioning programme demonstrating that the facility, as constructed, is consistent with design and safety requirements;

(ii) Operational limits and conditions derived from tests, operational experience and the assessments, as specified in article 8, are defined and revised as necessary;

(iii) Operation, maintenance, monitoring, inspection and testing of a spent fuel management facility are conducted in accordance with established procedures;

(iv) Engineering and technical support in all safety-related fields are available throughout the operating lifetime of a spent fuel management facility;

(v) Incidents significant to safety are reported in a timely manner by the holder of the licence to the regulatory body;

(vi) Programmes to collect and analyse relevant operating experience are established and the results are acted upon, where appropriate;

(vii) Decommissioning plans for a spent fuel management facility are prepared and updated, as necessary, using information obtained during the operating lifetime of that facility, and are reviewed by the regulatory body.

#### *Article 10. Disposal of spent fuel*

If, pursuant to its own legislative and regulatory framework, a Contracting Party has designated spent fuel for disposal, the disposal of such spent fuel shall be in accordance with the obligations of chapter 3 relating to the disposal of radioactive waste.



### CHAPTER 3. SAFETY OF RADIOACTIVE WASTE MANAGEMENT

#### *Article 11. General safety requirements*

Each Contracting Party shall take the appropriate steps to ensure that at all stages of radioactive waste management individuals, society and the environment are adequately protected against radiological and other hazards.

In so doing, each Contracting Party shall take the appropriate steps to:

(i) Ensure that criticality and removal of residual heat generated during radioactive waste management are adequately addressed;

(ii) Ensure that the generation of radioactive waste is kept to the minimum practicable;

(iii) Take into account interdependencies among the different steps in radioactive waste management;

(iv) Provide for effective protection of individuals, society and the environment, by applying at the national level suitable protective methods as approved by the regulatory body, in the framework of its national legislation which has due regard to internationally endorsed criteria and standards;

(v) Take into account the biological, chemical and other hazards that may be associated with radioactive waste management;

(vi) Strive to avoid actions that impose reasonably predictable impacts on future generations greater than those permitted for the current generation;

(vii) Aim to avoid imposing undue burdens on future generations.

#### *Article 12. Existing facilities and past practices*

Each Contracting Party shall in due course take the appropriate steps to review:

(i) The safety of any radioactive waste management facility existing at the time the Convention enters into force for that Contracting Party and to ensure that, if necessary, all reasonably practicable improvements are made to upgrade the safety of such a facility;

(ii) The results of past practices in order to determine whether any intervention is needed for reasons of radiation protection bearing in mind that the reduction in detriment resulting from the reduction in dose should be sufficient to justify the harm and the costs, including the social costs, of the intervention.

#### *Article 13. Siting of proposed facilities*

1. Each Contracting Party shall take the appropriate steps to ensure that procedures are established and implemented for a proposed radioactive waste management facility:

(i) To evaluate all relevant site-related factors likely to affect the safety of such a facility during its operating lifetime as well as that of a disposal facility after closure;

(ii) To evaluate the likely safety impact of such a facility on individuals, society and the environment, taking into account possible evolution of the site conditions of disposal facilities after closure;

(iii) To make information on the safety of such a facility available to members of the public;

(iv) To consult Contracting Parties in the vicinity of such a facility, insofar as they are likely to be affected by that facility, and provide them, upon their request, with general data relating to the facility to enable them to evaluate the likely safety impact of the facility upon their territory.

2. In so doing, each Contracting Party shall take the appropriate steps to ensure that such facilities shall not have unacceptable effects on other Contracting Parties by being sited in accordance with the general safety requirements of article 11.

#### *Article 14. Design and construction of facilities*

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The design and construction of a radioactive waste management facility provide for suitable measures to limit possible radiological impacts on individuals, society and the environment, including those from discharges or uncontrolled releases;

(ii) At the design stage, conceptual plans and, as necessary, technical provisions for the decommissioning of a radioactive waste management facility other than a disposal facility are taken into account;

(iii) At the design stage, technical provisions for the closure of a disposal facility are prepared;

(iv) The technologies incorporated in the design and construction of a radioactive waste management facility are supported by experience, testing or analysis.

#### *Article 15. Assessment of safety of facilities*

Each Contracting Party shall take the appropriate steps to ensure that:

(i) Before construction of a radioactive waste management facility, a systematic safety assessment and an environmental assessment appropriate to the hazard presented by the facility and covering its operating lifetime shall be carried out;

(ii) In addition, before construction of a disposal facility, a systematic safety assessment and an environmental assessment for the period following closure shall be carried out and the results evaluated against the criteria established by the regulatory body;

(iii) Before the operation of a radioactive waste management facility, updated and detailed versions of the safety assessment and of the environmental assessment shall be prepared when deemed necessary to complement the assessments referred to in paragraph (i).

### *Article 16. Operation of facilities*

Each Contracting Party shall take the appropriate steps to ensure that:

(i) The licence to operate a radioactive waste management facility is based upon appropriate assessments as specified in article 15 and is conditional on the completion of a commissioning programme demonstrating that the facility, as constructed, is consistent with design and safety requirements;

(ii) Operational limits and conditions, derived from tests, operational experience and the assessments as specified in article 15 are defined and revised as necessary;

(iii) Operation, maintenance, monitoring, inspection and testing of a radioactive waste management facility are conducted in accordance with established procedures. For a disposal facility the results thus obtained shall be used to verify and to review the validity of assumptions made and to update the assessments as specified in article 15 for the period after closure;

(iv) Engineering and technical support in all safety-related fields are available throughout the operating lifetime of a radioactive waste management facility;

(v) Procedures for characterization and segregation of radioactive waste are applied;

(vi) Incidents significant to safety are reported in a timely manner by the holder of the licence to the regulatory body;

(vii) Programmes to collect and analyse relevant operating experience are established and the results are acted upon, where appropriate;

(viii) Decommissioning plans for a radioactive waste management facility other than a disposal facility are prepared and updated, as necessary, using information obtained during the operating lifetime of that facility, and are reviewed by the regulatory body;

(ix) Plans for the closure of a disposal facility are prepared and updated, as necessary, using information obtained during the operating lifetime of that facility and are reviewed by the regulatory body.

### *Article 17. Institutional measures after closure*

Each Contracting Party shall take the appropriate steps to ensure that after closure of a disposal facility:

(i) Records of the location, design and inventory of that facility required by the regulatory body are preserved;

(ii) Active or passive institutional controls such as monitoring or access restrictions are carried out, if required; and

(iii) If, during any period of active institutional control, an unplanned release of radioactive materials into the environment is detected, intervention measures are implemented, if necessary.

## CHAPTER 4. GENERAL SAFETY PROVISIONS

### *Article 18. Implementing measures*

Each Contracting Party shall take, within the framework of its national law, the legislative, regulatory and administrative measures and other steps necessary for implementing its obligations under this Convention.

### *Article 19. Legislative and regulatory framework*

1. Each Contracting Party shall establish and maintain a legislative and regulatory framework to govern the safety of spent fuel and radioactive waste management.

2. This legislative and regulatory framework shall provide for:

(i) The establishment of applicable national safety requirements and regulations for radiation safety;

(ii) A system of licensing of spent fuel and radioactive waste management activities;

(iii) A system of prohibition of the operation of a spent fuel or radioactive waste management facility without a licence;

(iv) A system of appropriate institutional control, regulatory inspection and documentation and reporting;

(v) The enforcement of applicable regulations and of the terms of the licences;

(vi) A clear allocation of responsibilities of the bodies involved in the different steps of spent fuel and of radioactive waste management.

3. When considering whether to regulate radioactive materials as radioactive waste, Contracting Parties shall take due account of the objectives of this Convention.

### *Article 20. Regulatory body*

1. Each Contracting Party shall establish or designate a regulatory body entrusted with the implementation of the legislative and regulatory framework referred to in article 19, and provided with adequate authority, competence and financial and human resources to fulfil its assigned responsibilities.

2. Each Contracting Party, in accordance with its legislative and regulatory framework, shall take the appropriate steps to ensure the effective independence of the regulatory functions from other functions where organizations are involved in both spent fuel or radioactive waste management and in their regulation.

### *Article 21. Responsibility of the licence holder*

1. Each Contracting Party shall ensure that prime responsibility for the safety of spent fuel or radioactive waste management rests with the holder of the relevant licence and shall take the appropriate steps to ensure that each such licence holder meets its responsibility.

2. If there is no such licence holder or other responsible party, the responsibility rests with the Contracting Party which has jurisdiction over the spent fuel or over the radioactive waste.

#### *Article 22. Human and financial resources*

Each Contracting Party shall take the appropriate steps to ensure that:

(i) Qualified staff are available as needed for safety-related activities during the operating lifetime of a spent fuel and a radioactive waste management facility;

(ii) Adequate financial resources are available to support the safety of facilities for spent fuel and radioactive waste management during their operating lifetime and for decommissioning;

(iii) Financial provision is made which will enable the appropriate institutional controls and monitoring arrangements to be continued for the period deemed necessary following the closure of a disposal facility.

#### *Article 23. Quality assurance*

Each Contracting Party shall take the necessary steps to ensure that appropriate quality assurance programmes concerning the safety of spent fuel and radioactive waste management are established and implemented.

#### *Article 24. Operational radiation protection*

1. Each Contracting Party shall take the appropriate steps to ensure that during the operating lifetime of a spent fuel or radioactive waste management facility:

(i) The radiation exposure of the workers and the public caused by the facility shall be kept as low as reasonably achievable, economic and social factors being taken into account;

(ii) No individual shall be exposed, in normal situations, to radiation doses which exceed national prescriptions for dose limitation which have due regard to internationally endorsed standards on radiation protection; and

(iii) Measures are taken to prevent unplanned and uncontrolled releases of radioactive materials into the environment.

2. Each Contracting Party shall take appropriate steps to ensure that discharges shall be limited:

(i) To keep exposure to radiation as low as reasonably achievable, economic and social factors being taken into account; and

(ii) So that no individual shall be exposed, in normal situations, to radiation doses which exceed national prescriptions for dose limitation which have due regard to internationally endorsed standards on radiation protection.

3. Each Contracting Party shall take appropriate steps to ensure that during the operating lifetime of a regulated nuclear facility, in the event that an unplanned or uncontrolled release of radioactive materials into the environment occurs, appropriate corrective measures are implemented to control the release and mitigate its effects.

### *Article 25. Emergency preparedness*

1. Each Contracting Party shall ensure that before and during operation of a spent fuel or radioactive waste management facility there are appropriate on-site and, if necessary, off-site emergency plans. Such emergency plans should be tested at an appropriate frequency.

2. Each Contracting Party shall take the appropriate steps for the preparation and testing of emergency plans for its territory insofar as it is likely to be affected in the event of a radiological emergency at a spent fuel or radioactive waste management facility in the vicinity of its territory.

### *Article 26. Decommissioning*

Each Contracting Party shall take the appropriate steps to ensure the safety of decommissioning of a nuclear facility. Such steps shall ensure that:

- (i) Qualified staff and adequate financial resources are available;
- (ii) The provisions of article 24 with respect to operational radiation protection, discharges and unplanned and uncontrolled releases are applied;
- (iii) The provisions of article 25 with respect to emergency preparedness are applied; and
- (iv) Records of information important to decommissioning are kept.

## CHAPTER 5. MISCELLANEOUS PROVISIONS

### *Article 27. Transboundary movement*

1. Each Contracting Party involved in transboundary movement shall take the appropriate steps to ensure that such movement is undertaken in a manner consistent with the provisions of this Convention and relevant binding international instruments.

In so doing:

- (i) A Contracting Party which is a State of origin shall take the appropriate steps to ensure that transboundary movement is authorized and takes place only with the prior notification and consent of the State of destination;
- (ii) Transboundary movement through States of transit shall be subject to those international obligations which are relevant to the particular modes of transport utilized;
- (iii) A Contracting Party which is a State of destination shall consent to a transboundary movement only if it has the administrative and technical capacity, as well as the regulatory structure, needed to manage the spent fuel or the radioactive waste in a manner consistent with this Convention;
- (iv) A Contracting Party which is a State of origin shall authorize a transboundary movement only if it can satisfy itself in accordance with the consent of the State of destination that the requirements of subparagraph (iii) are met prior to transboundary movement;
- (v) A Contracting Party which is a State of origin shall take the appropriate steps to permit re-entry into its territory, if a transboundary movement is not or

cannot be completed in conformity with this article, unless an alternative safe arrangement can be made.

2. A Contracting Party shall not license the shipment of its spent fuel or radioactive waste to a destination south of latitude 60 degrees South for storage or disposal.

3. Nothing in this Convention prejudices or affects:

(i) The exercise, by ships and aircraft of all States, of maritime, river and air navigation rights and freedoms, as provided for in international law;

(ii) Rights of a Contracting Party to which radioactive waste is exported for processing to return, or provide for the return of, the radioactive waste and other products after treatment to the State of origin;

(iii) The right of a Contracting Party to export its spent fuel for reprocessing;

(iv) Rights of a Contracting Party to which spent fuel is exported for reprocessing to return, or provide for the return of, radioactive waste and other products resulting from reprocessing operations to the State of origin.

#### *Article 28. Disused sealed sources*

1. Each Contracting Party shall, in the framework of its national law, take the appropriate steps to ensure that the possession, remanufacturing or disposal of disused sealed sources takes place in a safe manner.

2. A Contracting Party shall allow for re-entry into its territory of disused sealed sources if, in the framework of its national law, it has accepted that they be returned to a manufacturer qualified to receive and possess the disused sealed sources.

### CHAPTER 6. MEETINGS OF THE CONTRACTING PARTIES

#### *Article 29. Preparatory meeting*

1. A preparatory meeting of the Contracting Parties shall be held not later than six months after the date of entry into force of this Convention.

2. At this meeting, the Contracting Parties shall:

(i) Determine the date for the first review meeting as referred to in article 30. This review meeting shall be held as soon as possible, but not later than thirty months after the date of entry into force of this Convention;

(ii) Prepare and adopt by consensus Rules of Procedure and Financial Rules;

(iii) Establish in particular and in accordance with the Rules of Procedure:

(a) Guidelines regarding the form and structure of the national reports to be submitted pursuant to article 32;

(b) A date for the submission of such reports;

(c) The process for reviewing such reports.

3. Any State or regional organization of an integration or other nature which ratifies, accepts, approves, accedes to or confirms this Convention and for

which the Convention is not yet in force, may attend the preparatory meeting as if it were a Party to this Convention.

### *Article 30. Review meetings*

1. The Contracting Parties shall hold meetings for the purpose of reviewing the reports submitted pursuant to article 32.

2. At each review meeting the Contracting Parties:

(i) Shall determine the date for the next such meeting, the interval between review meetings not exceeding three years;

(ii) May review the arrangements established pursuant to paragraph 2 of article 29, and adopt revisions by consensus unless otherwise provided for in the Rules of Procedure. They may also amend the Rules of Procedure and Financial Rules by consensus.

3. At each review meeting each Contracting Party shall have a reasonable opportunity to discuss the reports submitted by other Contracting Parties and to seek clarification of such reports.

### *Article 31. Extraordinary meetings*

An extraordinary meeting of the Contracting Parties shall be held:

(i) If so agreed by a majority of the Contracting Parties present and voting at a meeting; or

(ii) At the written request of a Contracting Party, within six months of this request having been communicated to the Contracting Parties and notification having been received by the secretariat referred to in article 37 that the request has been supported by a majority of the Contracting Parties.

### *Article 32. Reporting*

1. In accordance with the provisions of article 30, each Contracting Party shall submit a national report to each review meeting of Contracting Parties. This report shall address the measures taken to implement each of the obligations of the Convention. For each Contracting Party the report shall also address its:

(i) Spent fuel management policy;

(ii) Spent fuel management practices;

(iii) Radioactive waste management policy;

(iv) Radioactive waste management practices;

(v) Criteria used to define and categorize radioactive waste.

2. This report shall also include:

(i) A list of the spent fuel management facilities subject to this Convention, their location, main purpose and essential features;

(ii) An inventory of spent fuel that is subject to this Convention and that is being held in storage and of that which has been disposed of. This inventory shall contain a description of the material and, if available, give information on its mass and its total activity;



(iii) A list of the radioactive waste management facilities subject to this Convention, their location, main purpose and essential features;

(iv) An inventory of radioactive waste that is subject to this Convention that:

(a) Is being held in storage at radioactive waste management and nuclear fuel cycle facilities;

(b) Has been disposed of; or

(c) Has resulted from past practices.

This inventory shall contain a description of the material and other appropriate information available, such as volume or mass, activity and specific radionuclides;

(v) A list of nuclear facilities in the process of being decommissioned and the status of decommissioning activities at those facilities.

### *Article 33. Attendance*

1. Each Contracting Party shall attend meetings of the Contracting Parties and be represented at such meetings by one delegate, and by such alternates, experts and advisers as it deems necessary.

2. The Contracting Parties may invite, by consensus, any intergovernmental organization which is competent in respect of matters governed by this Convention to attend, as an observer, any meeting, or specific sessions thereof. Observers shall be required to accept in writing, and in advance, the provisions of article 36.

### *Article 34. Summary reports*

The Contracting Parties shall adopt, by consensus, and make available to the public a document addressing issues discussed and conclusions reached during meetings of the Contracting Parties.

### *Article 35. Languages*

1. The languages of meetings of the Contracting Parties shall be Arabic, Chinese, English, French, Russian and Spanish unless otherwise provided in the Rules of Procedure.

2. Reports submitted pursuant to article 32 shall be prepared in the national language of the submitting Contracting Party or in a single designated language to be agreed in the Rules of Procedure. Should the report be submitted in a national language other than the designated language, a translation of the report into the designated language shall be provided by the Contracting Party.

3. Notwithstanding the provisions of paragraph 2, the secretariat, if compensated, will assume the translation of reports submitted in any other language of the meeting into the designated language.

### *Article 36. Confidentiality*

1. The provisions of this Convention shall not affect the rights and obligations of the Contracting Parties under their laws to protect information from dis-

closure. For the purposes of this article, "information" includes, inter alia, information relating to national security or to the physical protection of nuclear materials, information protected by intellectual property rights or by industrial or commercial confidentiality and personal data.

2. When, in the context of this Convention, a Contracting Party provides information identified by it as protected as described in paragraph 1, such information shall be used only for the purposes for which it has been provided and its confidentiality shall be respected.

3. With respect to information relating to spent fuel or radioactive waste falling within the scope of this Convention by virtue of paragraph 3 of article 3, the provisions of this Convention shall not affect the exclusive discretion of the Contracting Party concerned to decide:

(i) Whether such information is classified or otherwise controlled to preclude release;

(ii) Whether to provide information referred to in subparagraph (i) above in the context of the Convention; and

(iii) What conditions of confidentiality are attached to such information if it is provided in the context of this Convention.

4. The content of the debates during the reviewing of the national reports at each review meeting held pursuant article 30 shall be confidential.

#### *Article 37. Secretariat*

1. The International Atomic Energy Agency (hereinafter referred to as "the Agency") shall provide the secretariat for the meetings of the Contracting Parties.

2. The secretariat shall:

(i) Convene, prepare and service the meetings of the Contracting Parties referred to in articles 29, 30 and 31;

(ii) Transmit to the Contracting Parties information received or prepared in accordance with the provisions of this Convention.

The costs incurred by the Agency in carrying out the functions referred to in subparagraphs (i) and (ii) above shall be borne by the Agency as part of its regular budget.

3. The Contracting Parties may, by consensus, request the Agency to provide other services in support of meetings of the Contracting Parties. The Agency may provide such services if they can be undertaken within its programme and regular budget. Should this not be possible, the Agency may provide such services if voluntary funding is provided from another source.

### CHAPTER 7. FINAL CLAUSES AND OTHER PROVISIONS

#### *Article 38. Resolution of disagreements*

In the event of a disagreement between two or more Contracting Parties concerning the interpretation or application of this Convention, the Contracting Parties shall consult within the framework of a meeting of the Contracting Parties

with a view to resolving the disagreement. In the event that the consultations prove unproductive, recourse can be made to the mediation, conciliation and arbitration mechanisms provided for in international law, including the rules and practices prevailing within IAEA.

*Article 39. Signature, ratification, acceptance, approval, accession*

1. This Convention shall be open for signature by all States at the headquarters of the Agency in Vienna from 29 September 1997 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention shall be open for accession by all States.

4. (i) This Convention shall be open for signature subject to confirmation, or accession by regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(ii) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to States Parties.

(iii) When becoming party to this Convention, such an organization shall communicate to the depositary referred to in article 43 a declaration indicating which States are members thereof, which articles of this Convention apply to it, and the extent of its competence in the field covered by those articles.

(iv) Such an organization shall not hold any vote additional to those of its member States.

5. Instruments of ratification, acceptance, approval, accession or confirmation shall be deposited with the depositary.

*Article 40. Entry into force*

1. This Convention shall enter into force on the ninetieth day after the date of deposit with the depositary of the twenty-fifth instrument of ratification, acceptance or approval, including the instruments of fifteen States each having an operational nuclear power plant.

2. For each State or regional organization of an integration or other nature which ratifies, accepts, approves, accedes to or confirms this Convention after the date of deposit of the last instrument required to satisfy the conditions set forth in paragraph 1, this Convention shall enter into force on the ninetieth day after the date of deposit with the depositary of the appropriate instrument by such a State or organization.

#### *Article 41. Amendments to the Convention*

1. Any Contracting Party may propose an amendment to this Convention. Proposed amendments shall be considered at a review meeting or at an extraordinary meeting.

2. The text of any proposed amendment and the reasons for it shall be provided to the depositary, who shall communicate the proposal to the Contracting Parties at least ninety days before the meeting for which it is submitted for consideration. Any comments received on such a proposal shall be circulated by the depositary to the Contracting Parties.

3. The Contracting Parties shall decide after consideration of the proposed amendment whether to adopt it by consensus, or, in the absence of consensus, to submit it to a Diplomatic Conference. A decision to submit a proposed amendment to a Diplomatic Conference shall require a two-thirds majority vote of the Contracting Parties present and voting at the meeting, provided that at least one half of the Contracting Parties are present at the time of voting.

4. The Diplomatic Conference to consider and adopt amendments to this Convention shall be convened by the depositary and held no later than one year after the appropriate decision taken in accordance with paragraph 3 of this article. The Diplomatic Conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted with a two-thirds majority of all Contracting Parties.

5. Amendments to this Convention adopted pursuant to paragraphs 3 and 4 above shall be subject to ratification, acceptance, approval or confirmation by the Contracting Parties and shall enter into force for those Contracting Parties which have ratified, accepted, approved or confirmed them on the ninetieth day after the receipt by the depositary of the relevant instruments of at least two thirds of the Contracting Parties. For a Contracting Party which subsequently ratifies, accepts, approves or confirms the said amendments, the amendments will enter into force on the ninetieth day after that Contracting Party has deposited its relevant instrument.

#### *Article 42. Denunciation*

1. Any Contracting Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one year following the date of the receipt of the notification by the depositary or on such later date as may be specified in the notification.

#### *Article 43. Depositary*

1. The Director General of the Agency shall be the depositary of this Convention.

2. The depositary shall inform the Contracting Parties of:

(i) The signature of this Convention and of the deposit of instruments of ratification, acceptance, approval, accession or confirmation in accordance with article 39;

(ii) The date on which the Convention enters into force, in accordance with article 40;

(iii) The notifications of denunciation of the Convention and the date thereof, made in accordance with article 42;

(iv) The proposed amendments to this Convention submitted by Contracting Parties, the amendments adopted by the relevant Diplomatic Conference or by the meeting of the Contracting Parties, and the date of entry into force of the said amendments, in accordance with article 41.

#### *Article 44. Authentic texts*

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, who shall send certified copies thereof to the Contracting Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at Vienna on the       day of       199 .

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#### NOTES

<sup>1</sup>United Nations document A/51/869.

<sup>2</sup>Not yet in force.

<sup>3</sup>United Nations document SPLOS/25; and depositary notification C.N.495.1998.TREATIES-5 of 7 October 1998 (proces-verbal of rectification of the French authentic text.)

<sup>4</sup>Not yet in force.

<sup>5</sup>Depositary notification C.N.473.1997.TREATIES-2 of 15 December 1997.

<sup>6</sup>Entered into force on 1 March 1999.

<sup>7</sup>Decision 1/CP.3 of the Conference of the Parties to the Convention at its third session.

<sup>8</sup>Not yet in force.

<sup>9</sup>General Assembly resolution 52/164, anrex.

<sup>10</sup>Not yet in force.

<sup>11</sup>Not yet in force. In accordance with article XIII, paragraph 4, of the Convention, the new text will come into force with respect to all Contracting Parties as from the thirtieth day after acceptance by two thirds of the Contracting Parties.

<sup>12</sup>*International Legal Materials*, vol. XXXVI, No. 6 (November 1997).

<sup>13</sup>Not yet in force.

<sup>14</sup>INFCIRC/566.

<sup>15</sup>Not yet in force.

<sup>16</sup>INFCIRC/567.

<sup>17</sup>Not yet in force.

<sup>18</sup>INFCIRC/546; see also *International Legal Materials*, vol. XXXVI, No. 6 (November 1997).

<sup>19</sup>Entered into force on 18 June 2001.

## Chapter V

### DECISIONS OF ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS<sup>1</sup>

#### A. Decisions of the United Nations Administrative Tribunal<sup>2</sup>

1. JUDGEMENT NO. 814 (25 JULY 1997): MONTELEONE-GILFILLIAN V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>3</sup>

*Non-promotion to P-3—Absence of an updated performance evaluation report was a violation of due process—Duty of Respondent to act with reasonable promptness to the Panel on Discrimination reports—Question of discrimination—Importance of fair treatment of staff members*

On 1 September 1984, the Applicant was assigned to the Kingston Office of the Special Representative of the Secretary-General for the Law of the Sea, as an Administrative Officer on a special post allowance (SPA) to the P-2 level. On 1 June 1988, she was promoted from the General Service category to the Professional category at the P-2 level, with retroactive effect to 1 April 1979. The Applicant's performance during the periods 1 January to 31 December 1986 and 1 January to 31 December 1987 was rated as "excellent". Subsequent to her promotion she took the necessary steps for the reclassification of her post to the P-3 level, in the belief that her department, the Office for Ocean Affairs and the Law of the Sea, had supported this reclassification. However, her department did not act upon the request for reclassification.

The Applicant appealed an administrative decision by the Secretary-General, upon the recommendation of the Appointment and Promotion Committee, not to include her name in the 1992 P-3 Promotion Register. The Applicant claimed that the promotion review process had been tainted by procedural irregularities and lack of due process. She asserted that the denial of her request for promotion was the culmination of a long pattern of discrimination based on her status as a female staff member, who was not a lawyer, in a small, local legal office, and the animosity against her resulting from an earlier dispute with the Respondent with regard to her initial promotion to the P-2 level.

In support of her claim, the Applicant cited the Respondent's failure to conduct performance evaluations in accordance with established procedures. She had not received a performance evaluation report (PER) between 1988 and 1995, and prior to 1988, she had consistently received PER ratings of "excellent" and "very good". At the time of her request for promotion review in 1993 there was a four-year gap in her performance record due to the Respondent's failure to follow his own performance review procedures.

The Joint Appeals Board (JAB) found, and the Tribunal concurred, that the absence of a current PER "was of critical importance" in the context of a promotion review and that the "long delay in providing the staff member with her PER

was a violation of the rules". The Tribunal also agreed with the JAB conclusion that the absence of an updated PER was a violation of due process. The Tribunal had previously concluded that when a denial of promotion was based on incomplete and inaccurate information, "the Applicant's right to full and fair consideration for promotion [was] not adequately respected". (Cf. Judgements No. 592, *Sue-Ting-Len* (1993), and No. 586, *Atefat* (1992).)

The Tribunal further noted that the Panel on Discrimination and Other Grievances (the Panel on Discrimination) had recommended to the Respondent, in August 1993, that he update her performance records. The Respondent had failed to provide an updated performance report until August 1995, almost two years after the Panel's recommendation and more than six years after her last PER. The Tribunal found that this delay constituted a serious violation of due process. The Tribunal had previously held that:

"[i]f the Panel on Discrimination is to continue to serve the valuable purposes for which it was established and to carry out its mission effectively, it is essential . . . that the Respondent react with reasonable promptness to the Panel on Discrimination reports regardless of whether it agrees or disagrees with them." (See Judgement No. 507, *Fayache* (1991), para. XVII.)

In this instance, the Tribunal noted that the Respondent's delay of one year in responding to the Panel's report and his further 12-month delay in meeting the Panel's recommendation had the effect of undermining the Panel's work and purpose. It also unnecessarily jeopardized the Applicant's chances of receiving a promotion.

The Tribunal next examined the Applicant's claim that she had been the victim of a long-standing pattern of discriminatory and prejudicial treatment. While the decision of the Compensation and Classification Service denying the Applicant reclassification to the P-3 level was not itself before the Tribunal, the process leading up to that decision was probative of the Applicant's discrimination claim. The Tribunal noted that the Applicant's attempt, since 1988, to receive adequate redress for her request for reclassification to the P-3 level had been rebuffed by refusal and inaction. Her initial submission in 1988 of a new job description at the request of her supervisors had never been acted upon, thereby denying her an opportunity for review of the reclassification of her post. In 1992, the Applicant again attempted to obtain such a review once the Office for Ocean Affairs and the Law of the Sea had been transferred to the Office of Legal Affairs. The Office of Legal Affairs refused to complete the form, again denying the Applicant a formal review of her request. Under pressure from the Applicant, the Office sought, instead, an informal review of the request. Ultimately, the Compensation and Classification Service denied the Applicant's request for reclassification. When the Applicant appealed this denial to the Classification Appeals and Review Committee, she received no response. Her appeal was never heard.

The Tribunal found that the delay and inaction were inappropriate and had contributed to the Applicant's belief that she was being discriminated against because of her status as a female who was not a lawyer. It also contributed to the impression that the Respondent was retaliating against her for her earlier dispute over her promotion to the P-2 level. In the view of the Tribunal, all staff members were entitled to be dealt with in good faith and in a manner that was fair. Moreover, the Tribunal noted that failure to abide by established procedures gave rise to dissatisfaction and low morale and threatened the in-

tegrity of the entire Organization. It also led to unnecessary and costly litigation. The Tribunal concluded that the Applicant's request for reclassification had not been dealt with efficiently, promptly or in good faith.

However, despite the Tribunal's finding that the Respondent's conduct in the present case was egregious, it agreed with the JAB that there was no evidence of a pattern of discrimination. In August 1993, the Panel on Discrimination had described the Respondent's treatment of the Applicant as "benign neglect". Two years later, the JAB concluded that there was no convincing evidence of discrimination. In the Tribunal's view, nothing had changed to modify that conclusion. The Tribunal had noted in a previous case that:

"... There is a vast difference between cases of [discrimination] and cases in which supervisors simply do not share a staff member's evaluation of his own qualifications, performance or merit, or in which there is disharmony between supervisors and a staff member for a variety of reasons having nothing at all to do with unlawful discriminatory attitudes". (Cf. Judgement No. 507, *Fayache* (1991), para. XVIII.)

The Tribunal considered that, in the present case, the Respondent should have dealt with the Applicant's request for reclassification more effectively. However, it did not find that the underlying motivation for the Respondent's conduct was discrimination on the basis of gender or retaliation.

Based on the foregoing, the Tribunal concluded that the Applicant was entitled to compensation for the violations of due process, but not for discriminatory treatment. The Respondent's failure to update the Applicant's performance record until 1995 and the unreasonable delay in responding to the Panel on Discrimination's report had jeopardized the Applicant's career advancement and violated her right to full and fair consideration for promotion.

For the above reasons, the Tribunal ordered the Respondent to pay to the Applicant nine months of her net base salary at the rate in effect on the date of the communication of this judgement. The Tribunal also affirmed the JAB's recommendation that the Applicant should receive full and fair consideration for all vacancies for which she applied and for which she was qualified.

## 2. JUDGEMENT NO. 841 (1 AUGUST 1997): GUEST AND SLATFORD V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>4</sup>

*Termination due to abolition of posts—Question of a promise creating a legal obligation—Did the Organization use its best efforts to reassign staff members?—Question of the staff members' acting in reliance upon a promise—Issue of the Organization discharging its obligation*

Both Applicants had served at the G-6 level in the World Food Council secretariat in Rome when their posts were abolished as a result of restructuring. Applicant Guest was offered another post with the United Nations Compensation Commission in Geneva but she rejected the offer, indicating that "she would accept nothing less than a permanent appointment at her current grade/step and non-local status". Such an offer was not forthcoming, and she was ultimately terminated. Applicant Slatford was offered another post in the Department for Policy Coordination and Sustainable Development in New York. She rejected the offer and was terminated. The Applicants appealed, claiming that the Secretary-General, on 11 September 1992, had promised that those staff members in the lower-echelon positions, such as the Applicants, were "in no danger of losing their em-



ployment with the United Nations as a result of the restructuring exercise". This same promise had been reiterated, to the United Nations Staff Union by the Controller on behalf of the Secretary-General on 16 March 1993 and by the Secretary-General himself on 17 June 1993, in a newsletter to the Staff Union in Vienna.

The Tribunal first considered whether the promise created a legal obligation for the Respondent. The Tribunal noted that the promise was specific in nature, made in public and reiterated in different media. Moreover, the promise was made by an official who had the authority to fulfil it. The Tribunal recalled its holding that "the Administration must behave responsibly in its administrative arrangements and refrain from expressing hopes or intentions that it has no expectation of fulfilling". (Cf. Judgements No. 444, *Tortel* (1989), and No. 342, *Gomez* (1985).) In the light of the foregoing, the Tribunal decided that the promise had created a legal obligation for the Secretary-General towards those staff members who were not in upper-echelon positions and who were threatened by the abolition of their posts.

Having established the existence of a legally binding promise, the Tribunal next considered the scope and content of the obligation created by the promise. The Tribunal concluded that the promise compelled the Secretary-General to make, in good faith, his best efforts to place the staff members whose posts had been abolished in reasonably equivalent positions, subject to the availability of such posts and to the willingness of the staff member to be transferred to other duty stations.

The Tribunal next considered whether, given the fact that a specific, legally binding promise existed, the Applicants had relied upon that promise in such a way as to justify compensation. The Tribunal recalled its jurisprudence on the issue, that "[a] staff member is normally entitled to expect the Organization to honour commitments on which the staff member has relied in good faith". (Cf. Judgement No. 444, *Tortel* (1989).) The Tribunal noted that the Applicants had acted in reliance upon the promise: in good faith, both Applicants had let eight months elapse without seeking other employment, trusting that the Secretary-General's promise would be fulfilled and that they would be offered posts equivalent to the ones they held in the World Food Council. The Tribunal was of the view that, if a staff member had acted, in good faith, in reliance on a legally binding promise, that staff member was entitled to compensation, if such reliance was ultimately detrimental to his or her interests.

Having established the content of the obligation created by the Secretary-General's promise, and the Applicants' reliance thereon, the Tribunal went on to examine whether, by that conduct, the Respondent had discharged that obligation. Specifically, the Respondent was obliged to use his best efforts to find suitable positions for both Applicants in the Organization. The facts indicated that, of a total of 13 World Food Council General Service staff members, only two had been re-employed in Rome. Four of the 13 had resigned, and five did not wish to be relocated outside Rome. The Applicants had declined offers of alternative employment. Thus, the Respondent had succeeded in placing only two staff members in new posts. The resignation of four staff members, and the refusal of a further five to be relocated outside Rome, had left the Respondent with only two staff members—the Applicants—whom he had to place. This was not a very heavy burden.

A review of the facts revealed some efforts by the World Food Council to place the Applicants and a manifest lack of will on the part of other organizations within the United Nations system to absorb General Service staff members from

the Council. The experience of Applicant Guest in Geneva, where she was interviewed on 28 and 29 October 1993, for posts with UNCTAD, revealed a rather disorganized effort by the authorities of the World Food Council with respect to her placement. The Joint Appeals Board (JAB) report stated that "in her concluding summary, the Appellant indicated that only certain interviews had been 'job interviews as such' but even then there [had] not [been] a very clear picture of particular requirements, duties or job availability". The Tribunal noted that the record did not show any attempt made by the World Food Council authorities to bring the difficulties they experienced in placing the Applicants, and thus the possible breach of the promise made by the Secretary-General, to his attention or to the attention of those in his cabinet.

As the record indicated, the Applicants eventually were offered posts. However, in the opinion of the Tribunal, the conditions upon which those offers were made were so disadvantageous compared to the Applicants' previous employment that both Applicants declined the offers.

In order to avail herself of the post in Geneva, Applicant Guest would have been obliged to resign her status as a permanent staff member (thereby forfeiting her right to compensation for involuntary separation), lose seniority to the G-5 level, relinquish her international recruitment status and pay her own travel and removal expenses. Moreover, she was given less than a day in which to accept the offer. Applicant Slatford's situation was similar. The offer made to her would have necessitated the resignation of her permanent appointment in favour of a one-year probationary appointment and the payment of her own travel and moving expenses to New York. The Tribunal considered that the terms of those offers, and the conditions upon which they had been made, demonstrated a callous disregard on the part of the Respondent for his responsibilities towards the Applicants. Such conduct did not meet the minimum requirements of good faith that were essential to good administration.

Having taken account of all the facts, the Tribunal considered that the Respondent had not made his best efforts to place the Applicants in posts that were reasonably equivalent to those they had occupied in the World Food Council, which his promise obliged him to do. The Tribunal concluded that the Respondent must pay the Applicants compensation for the breach of promise to them.

The Tribunal assessed this compensation at one year of each of the Applicants' net base salary at the rate in effect on the date of their separation from service. Furthermore, the Tribunal agreed with the recommendation by the JAB that each Applicant should be awarded the sum of \$4,000 "for the unreasonable and untimely manner" in which the employment offers had been made and the sum of \$1,000 for the Respondent's "failure to properly inform [them] of the developments in connection with the restructuring exercise".

### 3. JUDGEMENT NO. 848 (25 NOVEMBER 1997): KHAN V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>5</sup>

*Non-promotion to P-5—Issue of receivability—Question of a binding promise to promote the staff member—Staff members entitled to due consideration for promotion*

The Applicant, on 1 May 1991, wrote to the Director-General for Development and International Economic Cooperation requesting that she be promoted to the P-5 level, claiming that she had been occupying a P-5 post since 1981 and performing functions at the P-5 level. The Director-General recommended that she

should be promoted, but she was not. She appealed, arguing, *inter alia*, that the Administration had made a binding commitment to promote her to the P-5 level.

At the outset, the Tribunal dealt with the issue of a time-bar of the Applicant's claim that her non-placement in a P-5 post violated her rights. The Tribunal noted that the Applicant had been placed in the P-5 post in 1987, the year she had been promoted to the P-4 level. In July 1990, the Applicant was removed from this post and placed in a P-4 level post. It appeared that the Applicant had become aware of this change in placement only in 1991. At that time, the Applicant could have availed herself of the recourse procedures established by staff rule 111.2, which allowed an appeal from an administrative decision "within two months from the date the staff member received notification of the decision in writing". The decision to remove the Applicant from a P-5 post and to place her in a P-4 post was taken at least one and a half years before the date of her appeal. The Tribunal therefore found that, with respect to this claim, the Applicant's appeal was time-barred.

Regarding the Applicant's claim that there was a binding promise to promote her to the P-5 level, the Tribunal noted that the Applicant contended that in May 1991, she had received an oral promise from the Director-General for Development and International Economic Cooperation to promote her to the P-5 level. In support of that contention, the Applicant referred to a note for the file dated 27 February 1992, which recommended the Applicant for promotion and asked that consideration be given to the issue. However, the note did not contain a binding promise to promote the Applicant. Accordingly, the Tribunal was unable to conclude that a binding commitment existed to promote the Applicant.

The Tribunal also considered whether the Applicant's rights had been violated by the manner in which the P-5 post, to which the Applicant claimed she should have been assigned, was filled. The Tribunal noted that the P-5 post the Applicant was seeking had been filled by an external candidate through what was alleged to have been a "private arrangement", without having been advertised. This appeared to be a violation of staff regulation 4.4, which reads:

"Subject to the provisions of Article 101, paragraph 3, of the Charter and without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations."

The Tribunal had held on numerous occasions that staff members already employed by the United Nations had a right to the fullest consideration for appropriate vacancies. The breach of staff regulation 4.4 constituted a violation of the Applicant's rights. (Cf. Judgements No. 310, *Estabial* (1983), and No. 362, *Williamson* (1986).) The manner in which the post had been filled deprived the Applicant of her right to due consideration for promotion to the P-5 level.

In addition, the Tribunal considered whether the fact that there was no up-to-date PER violated the Applicant's rights to full and fair consideration for promotion to the P-5 level. The Tribunal had repeatedly held that the Organization must comply with its own procedures, which included the timely evaluations of a staff member's performance. "It is the responsibility of the Administration to ensure that personnel records required by promotion review bodies are complete, up to date and submitted in a timely fashion. The Tribunal finds that the Applicant's right to be duly considered for inclusion in the . . . Promotion Register was not fully respected and, as a consequence, the responsibility of the Organization is engaged". (Cf. Judgement No. 586, *Atefat* (1992).)

For the foregoing reasons, the Tribunal ordered the Respondent to consider the Applicant fully and fairly for promotion to the P-5 level as soon as possible, and to pay the Applicant an amount equal to four months of her net base salary, at the rate in effect on the date of the judgement, as compensation for the procedural irregularities set forth above.

4. JUDGEMENT NO. 850 (26 NOVEMBER 1997): PATEL V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>6</sup>

*Separation from service due to misconduct—Scrupulous respect for requirements of due process in cases of charges of fraud against a staff member—Question of whether procedural errors affected the substance of the case—Standard of proof in misconduct cases—Discretionary authority of the Secretary-General in misconduct cases*

The Applicant, who had entered the service of the United Nations in July 1977 at the P-3 level, was working in the Economic and Social Commission for Asia and the Pacific (ESCAP) in Bangkok at the D-1 level when she was separated from service for misconduct. She had altered a statement of annual earnings of her husband from the Asian Institute of Technology to indicate a lower salary, thus qualifying her for payment of the United Nations dependency allowance in respect of her husband.

The Applicant appealed the decision of the Secretary-General not to accept the recommendations of the Ad Hoc Joint Disciplinary Committee (JDC), but instead to separate her from service due to misconduct. Additionally, she requested the Tribunal to order, as a preliminary measure, the Respondent to communicate to the Applicant the “broad guidelines on sanctions applicable in cases of misconduct” as well as other information.

Regarding the Applicant’s plea for this preliminary measure, the Tribunal recognized the Respondent’s admission that the Applicant had not been provided with the “broad guidelines on sanctions applicable in cases of misconduct” which the Administration had furnished to the JDC. The Respondent also admitted that when the Chief, Personnel Services Section, had provided additional clarification on the case, neither the Applicant nor her counsel had been present and two witnesses had given testimony in the presence of each other. The Tribunal noted that the charge of misconduct due to fraud against the Applicant was severe, and therefore the Administration must be scrupulous in its respect for the requirements of due process. Having reviewed the case, the Tribunal took note of the Respondent’s admission that certain procedural errors had been committed. In that regard, paragraph 17 of administrative instruction ST/AI/371, dated 2 August 1991, states:

“If the Committee [the JDC] decides to hear oral testimony, both parties and counsel should be invited to be present, and no witnesses should be present during the testimony of other witnesses.”

The JDC did not respect this provision. The Tribunal found that although the JDC had committed procedural errors, those errors were technical in nature and had not affected the substance of the Applicant’s case so as to result in a miscarriage of justice (Judgement No. 583, *Djimbaye* (1992)). Nonetheless, the Tribunal emphasized that, especially in a difficult case such as the present one, the Administration must take care to ensure that all procedural requirements were scrupulously respected.

On the substance of her claim, the Applicant submitted that the Administration's charges against her had not been proved beyond a doubt and that they should therefore be dismissed. The Tribunal rejected this argument. Under the Staff Regulations and Rules, disciplinary proceedings were administrative proceedings regulated by the internal law of the Organization. Once a *prima facie* case of misconduct was established, the staff member must provide satisfactory evidence to justify the conduct in question (Judgements No. 484, *Omosola* (1990), and No. 592, *Dey* (1991)).

The Tribunal noted that it was incumbent upon the staff member who obtained allowances or benefits from the Administration, on the basis of his or her certification, to ensure that proper information was supplied. The Applicant had submitted a certificate for dependency benefits on which she indicated that "I certify that the information provided in this form, as well as the supporting evidence submitted with it, is true and complete to the best of my knowledge and belief". Since the certification was incorrect, the Applicant had the onus of proof to convince the Secretary-General that, in submitting the certificate, she had not acted contrary to the highest standards of integrity, as mandated by the Charter of the United Nations. In order for the Applicant to prevail, it was not sufficient for her to claim good faith based on trusting another's representation (cf. Judgement No. 424, *Ying* (1988)). The Applicant had produced evidence showing that her conduct was, or may have been, attributed to the dire personal circumstances in which she found herself at the time of her misconduct. The JDC's consideration of those facts had led it to find that they constituted mitigating circumstances. Consequently, the JDC had recommended that the Applicant should be suspended without pay for three months, that she should lose all steps within her grade above step I, and that a letter of censure should be placed in her personnel file.

However, as the Tribunal noted, it was within the Secretary-General's discretion to determine whether a staff member had met the standards of conduct required by the Charter and the Staff Regulations and Rules. (Cf. Judgements No. 414, *Ying* (1988); No. 425, *Bruzual* (1988); and No. 479, *Caine* (1990).) It was clear that the Secretary-General, in his determination, must act without prejudice or other extraneous considerations and with respect for the requirements of due process (cf. Judgements No. 436, *Wiedl* (1988), and No. 641, *Farid* (1994)). Taking into account the technical procedural errors previously discussed, the Tribunal considered that, however harsh the result might be for the Applicant, the Secretary-General was within his discretionary authority in determining that the Applicant's alteration of the certificate from the Asian Institute of Technology constituted misconduct, which had resulted in the sanction applied.

For the foregoing reasons, the application was rejected in its entirety.

5. JUDGEMENT NO. 851 (25 NOVEMBER 1997): GURUN V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>7</sup>

*Denial of right of a General Service staff member to apply for a Professional post—General Service to Professional examination goal of ending gender discrimination in the promotion process—Means of serving the Organization as a Professional staff member through internal and external examinations should be even-handedly applied*

The Applicant, who had entered the service of the Organization in February 1980, at the G-2 level, was working in the Special Unit of Palestinian Rights of

the Department of Political Affairs as a Meetings Services Assistant at the G-5 level when she applied for the post of the Non-Governmental Organization Liaison Officer, at the P-3 level, also in the Department of Political Affairs. She was informed that her application could not be taken into consideration and that the only means through which a Secretariat staff member could be promoted from General Service to the Professional category was through the General Service to Professional (G to P) examination. She appealed, contending that the decision to bar her from applying for a Professional post violated her rights under the United Nations Staff Regulations and Rules.

The Respondent relied in large part on General Assembly resolution 33/143, of 20 December 1978, to contend that his decision not to accept the JAB's recommendation to apply for the P-3 post in question if it had not been filled was in conformity with applicable United Nations regulations and rules. In examining resolution 33/143, which provided for the movement of General Service to the Professional level, the Tribunal noted that in its preamble, the Assembly called upon the Secretary-General and all the United Nations organizations "to put an end to any form of discrimination based on sex, as laid down in Article 8 of the Charter of the United Nations, in conditions of employment, recruitment, promotion and training and to ensure that the opportunities for employment and promotion of women in the United Nations system are equal to those of men".

Article 8 of the Charter provides that:

"The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."

The Tribunal noted that one of the goals of the above resolution was to put an end to discrimination based on sex in the conditions of employment and promotion. It had recently considered the issue and had held that "since the competitive examination places no improper restriction on the eligibility of any staff member for the competitive examination, it raises no questions under Article 8 of the Charter". (Cf. Judgement No. 722, *Knight et al.*, para. X (1995).)

General Assembly resolution 33/143 states that "competitive methods" must be used to select a candidate from the General Service category for Professional-level posts. The Applicant held an advanced university degree and had received excellent performance evaluation reports. Nevertheless, the Tribunal found that promoting a General Service candidate to the Professional category by other avenues than those expressly provided by the General Assembly resolution would run counter to the wording and spirit of the resolution. As explained by the Tribunal in Judgement No. 722, *Knight et al.* (1995):

"... since the General Assembly introduced the system regulating promotion from the General Service category to the Professional category through the competitive examination and since the Tribunal had upheld the legality of the system in Judgement No. 266, *Capio* (1980), there is no valid basis for challenging its legality ...

"V. The Tribunal has had a number of occasions to consider the competitive examination system, most recently in Judgement No. 694, *Chen* (1995), but has had no reason to question its legality or to reconsider the *Capio* decision. The Applicants in this case briefly refer to *Capio*; they do not ask that it be reconsidered, and the Tribunal will not do so."

A further argument that the Applicant advanced was that the requirements of the G to P examinations could be disregarded by non-staff members who could sit for the national competitive examinations to enter the Professional category. This suggested a situation whereby the Applicant's chances for promotion to the P-3 level would be greater if she were an external candidate. However, the Tribunal noted that when the Applicant wanted to apply for the P-3 post, she was unable to do so due to her own refusal to sit for the G to P examination. As a consequence, she might have been at a disadvantage with respect to external candidates who had passed the examination. But it considered that it could bear no responsibility for circumstances which were of the Applicant's own making. In addition, the national competitive examinations were, in any event, identical, both in form and in substance, to the G to P examinations. This demonstrated that the means for serving the Organization as a Professional staff member had been even-handedly applied. Everyone, whether internal or external, must take the same examination to become a Professional staff member at the P-1 and P-2 levels.

For the foregoing reasons, the Tribunal rejected the application in its entirety.

6. JUDGEMENT NO. 852 (25 NOVEMBER 1997): BALOGUN V. THE SECRETARY-GENERAL OF THE UNITED NATIONS<sup>8</sup>

*Non-consideration for post—Interpretation of staff regulation 4.4—Question of “internal” candidates being restricted to those employed under the 100 Series of the United Nations Staff Rules*

The Applicant had been serving with the Economic Commission for Africa (ECA) at the L-5 level, on a series of fixed-term intermediate-term appointments under the 200 Series of the United Nations Staff Rules, when he applied for the P-5 post of Chief, Public Administration and Management Section, in ECA. He was informed that he was not eligible for consideration for the vacancy, as it had been advertised internally only and as such was open only to staff members who had been recruited either through a competitive examination or through a review by the United Nations appointment and promotion bodies. The Applicant appealed, contending that the practice of making a distinction between staff members based on their type of contract was invalid.

In consideration of the case, the Tribunal took note of staff regulation 4.4, which provides that:

“Subject to the provisions of Article 101, paragraph 3, of the Charter, and without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had, in filling vacancies, *to the requisite qualifications and experience of persons already in the service of the United Nations . . .*” (emphasis added)

The Tribunal noted that the words “internal service” or “internal candidates”, which had been cited by the Respondent, were not even mentioned in the text of staff regulation 4.4; accordingly, the correct interpretation of this legal rule could not turn on such concepts. The Tribunal found that the important concept here was that the fullest regard should be given to the “requisite qualifications and experience” of those people “*already in the service of the United Nations*” (emphasis added). The Tribunal was of the view that the words “already in the service of the United Nations”, when given their natural and ordinary meaning, included those persons recruited under the 200 Series, who were employed in the exclusive service of the Organization, who had taken an oath to the Organization and whose

Letters of Appointment obliged them to abide by the terms and conditions of the United Nations Staff Regulations and Rules. All those staff members, except those serving the Organization on consultancy agreements, since they did not fulfil the conditions specified above, shared the same legal obligations towards the Organization and should therefore benefit from the same rights.

The Tribunal noted that Article 101, paragraph 3 of the Charter, which provides that:

“[t]he paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the *highest standards* of efficiency, competence and integrity . . .” (emphasis added)

is limited to a certain extent by the preference given in staff regulation 4.4 to those already serving the Organization as staff members. In interpreting staff regulation 4.4, the Tribunal believed that, in order to secure the “highest standards” in personnel, it was necessary that the appointment and promotion bodies be given the widest possibility of choice among staff members.

Another rule that bore on the interpretation of staff regulation 4.4 was Article 8 of the Charter of the United Nations, which provides that:

“The United Nations shall place *no restrictions on the eligibility* of men and women to participate in any capacity and under *conditions of equality* in its principal and subsidiary organs.” (emphasis added)

The Tribunal considered that the more restrictive the interpretation given by the appointment and promotions bodies to what they termed “internal service”, the more likely there was to be an infringement of staff regulation 4.4, in the light of Articles 8 and 101 of the Charter.

The Respondent advanced several arguments to support his contention that “internal” candidates should be restricted to those employed under the 100 Series of the Staff Rules. Among them was his claim that the conditions for employment under the 200 Series were less stringent than for 100 Series employment. The Tribunal was of the view that the paramount consideration in the process of selecting candidates for posts was their capacity to perform the tasks at issue. The appointment and promotion bodies should be perfectly capable, by reviewing an applicant’s performance history and evaluations as well as administering any tests they considered appropriate, of determining which candidate possessed the best qualifications for the post in question, notwithstanding the series of the Staff Rules under which the candidate was appointed. The text of staff regulation 4.4 supported that interpretation, as it spoke of the regard that must be given to the “requisite qualifications and experience” of those serving the Organization. For the Administration to give the “fullest regard” to candidates “in the service of the United Nations”, the appointment and promotion bodies must admit all the candidates in the service of the United Nations to the competition and must recognize that the determining factor was the “qualifications and experience” of the staff member, not the series of the Staff Rules under which he or she had been appointed. It was clear that admitting 200 Series staff to competition for “internal” vacancies did not assure their selection for the post, but barring them from competition was inconsistent with Articles 8 and 101 of the Charter.

The Respondent also contended that the posts of 200 Series staff were funded from different sources than those of 100 Series staff. Furthermore, he submitted that the “core functions” of the Secretariat were exercised by 100 Series



staff, who should therefore be selected for "internal" posts in order to promote their careers within the Organization. The Tribunal considered it irrelevant that funding for 200 Series posts was obtained from different sources than for 100 Series posts. The source of a post's funding had no bearing on the "qualifications and experience" of a candidate applying for a different post. With respect to the argument that 100 Series staff performed "core functions" and should therefore be privileged in the development of their careers within the Organization, the Tribunal found that, as the concept of "core function" was not defined, it was not an appropriate benchmark by which to determine who should enjoy a career in the United Nations. Further, the Tribunal noted that 100 Series appointments were, for posts above the P-3 level, open to external candidates who had not passed any kind of competitive examination. If those 100 Series staff had not passed a competitive examination, they were, by the Respondent's own logic, no different from 200 Series staff applying for the same posts.

The Tribunal was of the view that limiting recruitment for "internal" vacancies to staff holding 100 Series appointments, thereby excluding from consideration staff serving under the 200 Series, might not be in the best interests of the United Nations, as this would limit the Organization's ability to fill vacancies with the most qualified personnel. The fact that 200 Series staff members did not, when they entered the service of the United Nations, have an expectation of a career within their own branch of service did not necessarily deprive them of the legitimate expectation, under Articles 8 and 101 of the Charter, of a career serving the United Nations on the strength of their "qualifications and experience", as mandated by staff regulation 4.4.

For the foregoing reasons, the Tribunal ordered the Respondent to allow the Applicant, who had been recruited under the 200 Series, to submit his candidacy for any internal vacancy for which he was qualified and for which he applied. The Tribunal rejected all other pleas.

7. JUDGEMENT NO. 865 (26 NOVEMBER 1997): *EAGLETON V. THE COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST*<sup>9</sup>

*Repayment by staff member to United Nations of tax refund due to a casualty loss deduction from the United States Internal Revenue Service—Tax Equalization Fund—Purpose of reimbursement of taxes by the United Nations—Purpose of refund by the United States Internal Revenue Service due to casualty loss of property*

The Applicant, a citizen of the United States, entered the service of the Agency on 1 October 1988 as Deputy Commissioner-General in the Office of the Commissioner-General, at the Assistant Secretary-General level, in Vienna. In March 1994, the Applicant was preparing to retire and move back to the United States, but, having been appointed Special Coordinator for Sarajevo on 29 March 1994, he decided to remain in Europe. His personal effects had been packed in preparation for the move by the Vienna warehouse of Herber Hausner. Instead of proceeding with the move to the United States, the Applicant chose to store his personal effects with Herber Hausner while he was on assignment in Sarajevo. On 20 October 1994, a large portion of the Applicant's property was destroyed when a fire broke out in a Vienna warehouse where the property was being stored during the Applicant's service on special assignment in Sarajevo. The property was uninsured, and neither the warehouse management nor UNRWA was willing

to compensate the Applicant for his loss. The Applicant therefore took advantage of the casualty loss deduction provided by the United Nations Internal Revenue Code and, as a result, received a full refund of his 1991, 1992 and 1994 paid tax and a partial refund of his 1993 paid tax. The total refund amounted to \$213,993.00.

Pursuant to United Nations practice, UNRWA had reimbursed the Applicant for the portion of his 1991, 1992, 1993 and 1994 United States income tax which was attributable to his United Nations salary, a total of \$134,671. UNRWA claimed that the Applicant was required to transfer the corresponding amount of his tax refund to UNRWA. The Applicant claimed that he was entitled to the full refund amount. As a result of this dispute, the Administration required the Applicant to provide UNRWA with a letter of credit for the sum of \$134,671.

In the view of the Tribunal, the proper resolution of this matter required an understanding of the source of the funds which were used to reimburse the Applicant for the taxes imposed by the United States on the Applicant's United Nations salary. All United Nations employees were subject under the rules of the United Nations staff assessment plan to a direct assessment by the United Nations on their United Nations salaries and emoluments. (Cf. Judgements No. 237, *Powell* (1979); No. 425, *Bruzual* (1988).) The majority of United Nations employees were exempt from national taxation under section 18 of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946. The staff assessment plan was intended to approximate national income taxation. The United States, however, was not bound by section 18 of the Convention, and therefore taxed American United Nations employees on their United Nations salaries as well as their other personal income. In order to provide relief from double taxation to those employees who were subject to both the United Nations staff assessment and national income taxation, the United Nations had developed a tax reimbursement system. Under staff regulation 3.3, where a United Nations staff member was subject to both staff assessment and national income taxation with respect to his or her United Nations salary, the Organization refunded to the employee the full amount of the national income taxes paid on his or her United Nations salary. The source of these tax reimbursements was the Tax Equalization Fund, which consisted of the revenues collected from staff assessments.

The Tribunal considered that while the reimbursement by the Organization of the Applicant's United States taxes was designed to protect him from the effect of double taxation, the tax refund from the United States authorities was intended to compensate him for the casualty loss of his property. The confiscation by the Agency of that payment would vitiate the purpose of the refund by the United States authorities.

For the foregoing reasons, the Tribunal held that the Applicant was entitled to \$133,348 of the \$134,671 tax refund issued to him by the United States Government. Accordingly, the Tribunal ordered the Respondent: (a) to release to the Applicant the letter of credit in the amount of \$134,671, which UNRWA currently held; and (b) to pay to the Applicant \$1,370.42, which represented the fee paid by the Applicant to the South Side Bank (\$2,693.42) in order to obtain the above-referenced letter of credit, minus the \$1,323 owed to UNRWA in relation to the federal income tax for the year 1994.

## **B. Decisions of the Administrative Tribunal of the International Labour Organization<sup>10</sup>**

1. JUDGEMENT NO. 1581 (30 JANUARY 1997): ROMBACH-LE GULUDEC V. EUROPEAN PATENT OFFICE<sup>11</sup>

*Non-waiver of immunity by European Patent Office in connection with an allegation of assault by the president of the Office against another staff member—Competency of the Tribunal*

The complainant was a staff member of the European Patent Office (EPO) at The Hague when, on 4 December 1995, she took part in a demonstration at the EPO headquarters in Munich to protest against meetings of the heads of delegation of its Administrative Council. She alleged that during the demonstration she had been assaulted by the then president of EPO and sustained injury and consequential pain and distress. Subsequently, on 11 March 1996, the complainant learned from a communiqué from the new president to the staff that in response to a letter from the German authorities the Administrative Council had decided not to waive the immunity of the former president in regard to that incident.

By a letter dated 7 June 1996 to the chairman of the Administrative Council, the complainant lodged an internal appeal against the decision not to waive the former president's immunity. In response, by a letter dated 29 July 1996, the chairman informed her that she was not free to appeal against decisions of the Council. He added, however, that the Service Regulations provided other means of redress. She filed an appeal with the Tribunal.

The Tribunal dismissed the complaint, relying on Judgement No. 1543 (*in re Popineau No. 12*), in which it had declared that the decision whether or not to waive the president's immunity fell within the Council's discretion and that such exercise of discretion was a matter outside the Tribunal's competence, affecting as it did relations between the defendant organization and a member State. The Tribunal held that the reasoning in Judgement No. 1543 held good for the instant case. Since the complaint was therefore clearly irreceivable it must be summarily dismissed in accordance with article 7(2) of the Tribunal's Rules.

2. JUDGEMENT NO. 1584 (30 JANUARY 1997): SOUILAH V. WORLD METEOROLOGICAL ORGANIZATION<sup>12</sup>

*Dismissal for unsatisfactory conduct—Suspension of dismissal until judgement—Application for hearings of witnesses—Regulations 1.5 and 4.2—Standard of conduct for an international civil servant—Question of proportionality of disciplinary measure to offence*

The complainant, an Algerian, was dismissed from WMO, effective 20 January 1996, pursuant to rule 192.1(a) for repeated breaches of the standards of conduct of the international civil service. He had been employed at the G-4 level.

In March 1975, the complainant had been married in Geneva and, subsequently, had had a son, in May 1975, and a daughter, in September 1978, both born in Geneva. His marriage had been dissolved by a Swiss cantonal court in March 1989 and custody of the children had been awarded to the mother, and he was ordered to pay support of 1,000 francs to his former wife. He neither defended the divorce suit nor objected to the terms of the decree. However, he neither kept up the payments of alimony nor met other debts, such as bank loans, rent and bills from doctors.

When the complainant failed to make his support payments, the Geneva Cantonal Service for Advances and Recovery of Alimony (SCARPA) lent sums to his former wife and sought recovery from him. He failed to pay the sums and, in February 1990, he was prosecuted for default of maintenance under section 217 of the Swiss Penal Code. When he again failed to pay the sums, SCARPA referred the matter to the Permanent Mission of Switzerland to the United Nations Office at Geneva. Thereafter, there ensued reminders to the complainant of his duties towards both WMO and the host country, as well as much written and oral discussion about the case between the Swiss authorities, including the Mission, and WMO. Eventually, in 1992, the criminal chamber of the Geneva cantonal court, a police court, sentenced him to three months' imprisonment, subject to five years' stay of execution, for default of maintenance under section 217 of the Penal Code and for misappropriation of property under distraint in breach of section 169. On 8 December 1993, the police court gave him, pursuant to section 169, a suspended sentence to one month's imprisonment for failure to pay into the Receiver's Office sums he owed to another creditor. On 1 December 1994, the police court again sentenced him for default of maintenance, under section 217, to two months' imprisonment and to three years' expulsion from Switzerland, both penalties to be subject to three years' stay of execution. It revoked the stay granted on 9 November 1992. The criminal chamber of the cantonal court upheld the sentence on 4 May 1995. The court stated that, according to SCARPA, the arrears amounted to 67,010 Swiss francs, whereas in a letter of 8 May 1995 the Mission said they totalled 159,450. The true figure remained unclear.

On 15 June 1995, the police court again gave him a suspended sentence, under section 180 of the Penal Code, to one month's imprisonment for threat of assault to another official, who had filed suit against him. The criminal chamber of the cantonal court upheld the judgement in substance on 23 October 1995. The complainant made two applications for pardon, but a legislative body of the Canton of Geneva (le Grand Conseil) dismissed them.

His landlord and his dentist approached WMO about unpaid bills. It then came to light that the United Nations Staff Mutual Insurance Society had made him a loan to pay the dentist, but he had used the money to clear other debts.

Disciplinary proceedings were finally initiated, and in its report dated 12 January 1996, the unanimous conclusion was breach of duty warranting dismissal. The Secretary-General endorsed the report, and the complainant was dismissed from WMO service as from 20 January 1996.

The complainant appealed, claiming that his conduct was confined to his private life, his services being found satisfactory; that the punishment was too harsh; and that it affected others: he could not now meet his debts to his family and other creditors.

The complainant also had requested the Tribunal to suspend dismissal so that he might remain in employment at least pending the judgement. However, the Tribunal pointed out that, pursuant to article VII (4) of its statute, it was not empowered to make a ruling of that kind. Furthermore, the complainant had applied for the hearing of four witnesses: three members of the WMO staff and his former wife. However, since any material issue of fact or of law might be decided on the written evidence, the Tribunal decided such hearing would serve no purpose.

In consideration of the merits of the case the Tribunal recalled regulation 1.5, which read:

"Members of the secretariat shall conduct themselves at all times in a manner befitting their status as international civil servants. They shall avoid any action and in particular any kind of public pronouncement which may adversely reflect on that status . . . they shall at all times bear in mind the reserve and tact incumbent upon them by reason of their international status."

Regulation 4.2 further declared the paramount consideration in the appointment of staff to be the need to secure the highest standards of efficiency, competence and integrity. And WMO took the quite proper view that it must follow the same criteria in deciding whether to keep someone on its staff.

The Tribunal noted that besides carrying out his allotted tasks an international civil servant had a duty to show such dignity of behaviour as not to harm the good name that the organization must enjoy if it was to do its job properly. He must in particular abide by the law and respect the public order of the host State of any other country to which the organization might assign him. He must govern his private life accordingly, especially as it might touch on society at large: see, for example, Judgement 1501 (*in re Cesari*). Thus, in previous cases, the Tribunal had upheld the dismissal of an official who had complained about his organization to the host country and accused another staff member of many offences (Judgement 63, *in re Andreski*); of one who had embezzled funds and run up debts (Judgement 79, *in re Giannini*); of one who kept reporting drunk for work (Judgement 207, *in re Khelifati*); and of one who had without consent set up a business of his own in the area of the organization's work (Judgement 1363, *in re Popineau Nos. 6, 7 and 8*).

As the Tribunal noted, in the present case the complainant, though well paid (for the month of May 1995 his pay had amounted to 6,988.40 Swiss francs plus 1,051.35 in allowances; after deductions totalling 1,152.80 francs, for pension contributions, insurance premiums and the rental of a garage, he was left with 6,886.95 francs in take-home pay), had failed time and again, and quite improperly, to meet his financial obligations, in particular the payment of alimony to his family, and disobeyed orders by the Swiss courts and administrative authorities. The Republic and Canton of Geneva, where the organization had its headquarters, had had to lend large sums, of which he had paid back only a small fraction. He had caused loss to the canton, and that was the more objectionable in that he was paying no income tax. He had received four prison sentences for offences against Swiss law—default of maintenance, misappropriation of property under duress and threat of assault—which seriously disrupted public order. The Swiss Permanent Mission and his creditors had approached the organization many times, thereby putting it under the awkward obligation of acknowledging the misconduct of a member of the staff. Moreover, more than once he had received money from the United Nations Staff Mutual Insurance Society to pay bills, yet had used it for other purposes because he was in financial straits.

As to the claim by the complainant that the punishment was disproportionately heavy, the Tribunal stated that according to the rule of proportionality there must be some reasonable connection between offence and punishment, particularly when the official was dismissed on disciplinary grounds: see, for example, Judgements 937 (*in re Fellhauer*); 1070 (*in re Couton*); 1210 (*in re Zaidi*); 1250 (*in re Pena-Montenegro*); and 1363 (*in re Popineau Nos. 6, 7 and 8*). There had been no breach of the rule in the present case. WMO was free to conclude that its own interests required dismissing someone as neglectful of duty as

the complainant. He had been given a long time in which to improve, though to no avail; accordingly his interests had been given ample consideration.

The complainant further argued that, his conduct having been beyond reproach since October 1994, it was disproportionately severe to dismiss him for his earlier conduct, particularly as his family and other creditors were now at risk of receiving nothing at all. In the view of the Tribunal, the plea was irrelevant. The Tribunal held that, for one thing, there was no evidence to suggest that the complainant had offered the organization and all his creditors any sound arrangements for clearing off what he owed to them; had he done so, his creditors and the Permanent Mission would no doubt have dropped the matter. For another thing, according to reports the organization had received after October 1994, his conduct had grown much worse. The conclusion was that WMO had good reason to believe that keeping him on was unacceptable and its Secretary-General had not exceeded the bounds of his discretion in deciding on dismissal. The complaint was dismissed.

3. JUDGEMENT NO. 1586 (30 JANUARY 1997): DA COSTA CAMPOS V. EUROPEAN SOUTHERN OBSERVATORY<sup>13</sup>

*Dismissal based on less than serious conduct—Duty to warn staff member of shortcomings—Right of defence—Proper notice of termination—Question of damages regarding wrongful termination*

The European Southern Observatory (ESO) recruited the complainant, a Belgian who was born in 1943, in 1974 on a three-year appointment as a Personnel Officer at step 5 in grade 8. After two extensions it granted him an indefinite appointment on 15 June 1981. On 19 January 1982, it gave him an award for outstanding service. On 23 November 1988, it promoted him to step 10 in grade 9, as Head of Personnel Administration and General Services as from 1 March 1988. He received a second award for outstanding service on 20 December 1989. The Director General promoted him to step 4 in grade 10 on 17 December 1992.

The post of head of Personnel was vacant from the end of July 1980 to August 1993, except from January 1985 to April 1986. In March 1993 the complainant applied for it, but ESO said that he was not qualified.

By a letter of 1 December 1994, the Director General told him that he was dismissed under article R II 6.01 (i) of the Staff Regulations, which allowed dismissal “for other specified reasons, related to the exercise of functions”. The letter stated that though his appointment was to expire on 1 July 1995, he was to stop work on 2 December 1994, the date of the notice of dismissal. He would be on special paid leave during the period of notice and was to remove all his belongings from his office by 5 p.m. on that day. The reasons given were that for over a year he had been failing to carry out his main tasks properly, had got on badly with his first-level supervisor, the head of Personnel, and by his behaviour had marred the organization’s standing and good name.

In consideration of the case, the Tribunal noted that the report of the Joint Advisory Appeals Board had unanimously concluded that ESO had failed to show just cause for the termination. Furthermore, ESO had admitted to having had no legal grounds for dismissal, but contended that the complainant’s personality barred taking him back, and that he should be compensated for wrongful dismissal.

In the view of the Tribunal, citing Judgement 1546 (*in re Randrianantenaso*), if ESO wished to dismiss him on the grounds of his shortcomings, though not serious, it had a duty to warn him in what ways he fell short and give him the opportunity of doing better. ESO had failed to do this. Moreover, the Tribunal stated that had his shortcomings warranted disciplinary action, he should have had the safeguards of disciplinary proceedings. It was wrong to have deprived someone of those safeguards by resorting to some other procedure for termination that allowed no right of defence (Judgement 1496, *in re Gusten*).

The Tribunal was also of the opinion that the summary dismissal and the way in which the complainant had received notice of it were quite irrelevant to ESO's interests and were damaging to his dignity and good name.

Regarding the damages to be awarded, the Tribunal recalled article VIII of its statute:

"... if satisfied that the complaint was well founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon"; but if such rescinding or performance is "not possible or advisable" the Tribunal will award the complainant compensation for the injury sustained.

Furthermore, in the opinion of the Tribunal, the circumstances of each case determined whether redress was to take the form of reinstatement or an award of damages. In the present case, though the complainant must be made whole, that might be done by an award. The Tribunal doubted whether it would be reasonable to order ESO to take back someone who got on badly with other senior officers, especially when there might be little scope for finding him proper employment in an organization of that size. Besides, in the talks the complainant had not ruled out a financial settlement, even though there had been no agreement on the amount.

The parties had agreed that if ESO had abolished the complainant's post it might under the material rules have awarded him the equivalent of 57 1/2 months' basic pay in all: 46 1/2 months' basic pay plus repatriation grants and pay for the period of 6 months' notice. ESO had offered to round the amount up to 58 months' pay. But instead of abolishing his post it had wrongfully dismissed him. Taking account of his age and career prospects, the Tribunal held that he would get fair redress in the award of a total of 61 months' basic pay including all entitlements of employment. Any sums already paid by the Observatory were to be subtracted from the total.

The Tribunal further held that ESO might choose between reinstatement and the award of such damages. Whichever option it might prefer, the complainant was further entitled, by way of compensation for the injury attributable to the sudden breach of contract, to an award of 50,000 French francs in moral damages. Since the complaint was allowed, the Observatory should pay him costs of 20,000 francs.

4. JUDGEMENT NO. 1595 (30 JANUARY 1997): DE RIEMAEKER (No. 3) v. EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION<sup>14</sup>

*Non-appointment to post—Limits of discretion in matching an applicant with qualifications indicated in a vacancy notice—Question of remedy*

The complainant joined the staff of the European Organisation for the Safety of Air Navigation (Eurocontrol) on 2 January 1969, in the Translation and Inter-

pretation Division. She was Chief Interpreter, and Acting Head, when she impugned the Director General's decision to appoint another individual as Head of the Division and reject her own application for the post. She also challenged a decision to relieve her of her duties of Acting Head, and sought reinstatement in those duties and permanent appointment as Head of the Division.

As regards the complainant's plea that Eurocontrol had failed to observe the terms of the vacancy notice for the post, the Tribunal noted that the vacancy notice, *inter alia*, had required "long experience (at least 10 years) of translation, revision and interpretation". The complainant had claimed that she met the requirements of the post, and that the individual selected had never been an interpreter and had no experience of interpretation. The agency had responded that the individual, though not an interpreter, knew enough about interpretation to run a language service and had skills in management that the complainant lacked. In the agency's view, an applicant did not have to meet all the requirements set out in the notice; thus it was a proper exercise of discretion to lend more weight to some of them than to others, especially since no one candidate, and certainly not the complainant, had all of them.

The Tribunal rejected the agency's argument. In its opinion, though the qualifications stated in a vacancy notice were not absolutely binding and the Director General might still exercise some discretion, he might not so utterly discard them as to flout the rules that ensured proper openness and objectivity of the competition. In the present case, the qualifications that Eurocontrol had set out were fully warranted by its desire to appoint someone with experience of both translation and interpretation to head the service. Having itself laid down those essential qualifications, the agency had a duty to abide by them. Yet it had plainly failed to do so since, as it admitted that the individual selected had never worked as an interpreter, though he had spent "22 years in the English language section of Division GS.3", and so had no experience at all of interpretation, let alone the "long" experience the notice had called for. Moreover, his having had one interpreter as a subordinate obviously did not amount to experience in heading a team of translators and interpreters.

The Tribunal held that although the complaint was irreceivable insofar as the complainant was claiming reinstatement in her former duties and permanent appointment to the post, the procedure for appointment to the post should be cancelled and the case should be sent back to Eurocontrol so that it might make an appointment to the post by due process. The Tribunal also ordered that Eurocontrol should pay the complainant 100,000 Belgian francs in costs.

5. JUDGEMENT NO. 1601 (30 JANUARY 1997): AELVOET (NO. 5) AND OTHERS V. EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION<sup>15</sup>

*Claims for costs of appeal—Standard for filing of a complaint against a decision affecting a class of officials—Question of a cause of action—Basis for claim for costs upon reversal of disputed decisions*

The complainants were staff members of Eurocontrol in category C, and were paid a "typist's allowance", pursuant to rule 7 of the Rules of Application of the Staff Regulations. On 11 January 1995, the Director General issued office notice 2/95 to amend the conditions governing payment and, on 1 March 1995, issued notice 7/95 to give effect to notice 2/95. Notice 7/95 provided for a "functional" allowance that was "linked to the performance of the specific tasks of a



'Head of Secretariat' post". It listed the posts that conferred entitlement to the allowance and the names of the staff in those posts.

In a letter dated 16 March 1995, the Staff Association requested the Director General to hold the consultations provided for under the agreement of 9 January 1992 between the agency and the staff unions. When the Director General refused, the Association requested the chairman of the Permanent Commission of Eurocontrol to order that the procedure for consultation should be followed. On 29 May 1995, the complainants lodged internal "complaints" under article 92(2) of the Staff Regulations requesting withdrawal of the two notices and for a declaration that the Director General had acted unlawfully in failing to suspend the effect of them pending a decision by the Permanent Commission.

On 2 June 1995, the Director General issued office notice 10/95 suspending notices 2/95 and 7/95 until further notice.

In the meantime, the "complaints" were referred to the Joint Committee for Disputes, which held that they showed no cause of action. The Director General endorsed the Committee's conclusion. Though they filed separately on 4 December 1995, the complaints raised the same issues of fact and law, and accordingly the Tribunal joined them.

Eurocontrol had contended that the appeal was irreceivable. It claimed that notices 2/95 and 7/95 were general administrative decisions affecting a class of officials, whereas the Tribunal ruled only on individual disputes. However, the Tribunal, citing Judgement 1081 (*in re Albertini and others*) recalled that it had already ruled that the mere fact that a decision affected a category of staff, and was therefore a general one, did not preclude a challenge. Citing Judgement 1134 (*in re Ngoma*), the Tribunal added that the complainant must comply with the requirement in article VII (1) of its statute that internal remedies must be first exhausted.

Eurocontrol further argued that since notice 10/95 had suspended notices 2/95 and 7/95, the challenges had no cause of action. However, the Tribunal was of the view that notice 10/95 was not about the substance but rather concerned the future date of the entry into force of the earlier notices. In other words, there was nothing to preclude their being put into effect soon, and the complainants still had reason to seek the outright withdrawal of provisions that might have caused them injury, even if Eurocontrol alleged that no actual injury was then ascertainable. Indeed, Eurocontrol subsequently cancelled notices 2/95 and 7/95 by notice 19/95, dated 22 December 1995, and it was at that point that the complainants lost their cause of action.

Regarding the complainants' claim for costs of the present appeal, the Tribunal concluded that since the reversal of the disputed decisions had come only after the filing of the complaints and the complainants had therefore been put to needless expense, their claim for costs had succeeded. Eurocontrol's counterclaim to an award for costs against the complaints was dismissed. The complainants were awarded 100,000 Belgian francs.

6. JUDGEMENT NO. 1603 (30 JANUARY 1997): BENSOUSSAN, BONGIOVANNI AND FREEMAN (No. 3) v. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS<sup>16</sup>

*Request for payment of difference between previous flawed post adjustment and new corrected amount—Right of staff member to challenge lawfulness of a*

*decision taken outside the organization—Question of pension contributions in calculation of post adjustment—Question of length of time in changing flawed system—Issue of budgeting for payment of damages*

The complainants were employees of FAO. They challenged decisions by the Director General of the organization not to pay them the difference between the amounts they said should have been paid in post adjustment in the 24 months preceding the date of making their claims and the amounts they were actually paid. They also claimed interest thereon.

In consideration of the case, the Tribunal noted that the International Civil Service Commission had defined “post adjustment” as an amount paid in addition to net base salary, which was designed to ensure that the take-home pay of Professional and higher categories of staff of the common system of the United Nations, to which FAO belonged, had the same purchasing power equivalent throughout the system. In determining the post adjustment account was taken not only of the cost of goods and services at duty stations, but also of the sums deducted from staff pay for contributions to the United Nations Joint Staff Pension Fund.

The Tribunal further noted that it was the Commission which worked out the method of determining post adjustment: see for example Judgements 1265 (*in re Berlioz and others*) and 1266 (*in re Cussac and others*). For the purpose of reckoning the effect of pension contributions, the Commission had made changes to correct the flaws of the method it had introduced in July 1990. It had become clear in 1993 that that method was perverse in that, as FAO had pointed out, it was serving to lower the figure of the post adjustment allowance “by one third of the amount of any increase in pension contributions, while the deductions made from staff pay were increased by the same amount”. It was not until 1995 that the Commission had done something: it endorsed a recommendation from the Advisory Committee on Post Adjustment Questions for counting “actual” pension contributions at each updating of the post adjustment index. The Commission had set the effective date of the change at 1 November 1995.

Mr. Bensoussan and Mr. Bongiovanni had lodged claims on 27 October 1994 and Mr. Freeman on 29 December 1994. Having put the Commission’s decisions into effect, FAO had told the complainants that the method of reckoning the index would apply to them as from 1 November 1995. They impugned the final decisions that the Director General had taken on 22 June 1995 in refusing to apply the new method retroactively to their post adjustment allowance. They contended that by condoning a flawed method the organization had acted in bad faith; that its belief that it was bound by the Commission’s decision and its refusal to pay interest on arrears amounted to mistakes of law; and that it was so doubtful of being in the right that it had made provision in its budget for 1996-1997 against the retroactive payments they were claiming.

The Tribunal made the point that even though the Commission might make recommendations for aligning conditions of service in the common system and might decide on the methods of determining them, the staff might still challenge any action by that body, independent though it be of the organization that employed them. As was said in Judgement 1000 (*in re Clements, Patak and Rodl*), to cite but one:

“... when impugning an individual decision that touches him directly, the employee of an international organization may challenge the lawfulness of any general or prior decision, even by someone outside the organization, that affords the basis for the individual one.”

Accordingly, the Tribunal considered that the complainants might challenge the lawfulness of the Commission's method up to November 1995 even though the FAO had done no more than fall in line. On that score the organization was wrong in pleading that the complainants were out of time: the staff might always challenge in law the rules that were applied to them. In any event the Staff Rules of the FAO allowed a claim to payment of amounts due in the immediately preceding 24 months.

Regarding the lawfulness of the method followed from 1990 to 1995 for reckoning post adjustment, the Tribunal was aware that there was no one method: whether it counted pension contributions in full, or only in part, or discounted them altogether in the tally of expenditure by staff. Such contributions amounted to expenditure in that they reduced take-home pay and yet they were an investment as well, and there was no faultless method. The draughtsman's purpose must be to establish a system as fairly as he could, checking any damage caused.

In that regard, the Tribunal considered that the method introduced in 1995 served the purpose better than the one it had superseded, but the method in use from 1990 to 1995 was not unlawful. Nor had the Commission taken too long, as the complainants had contended, to change the method once its unwanted effects had shown up. As FAO and the Commission had both pointed out, the system of post adjustment was complex. It was plain on the evidence that sure and abiding results were scarcely attainable.

It was the conclusion of the Tribunal that since the method that had been dropped in 1995 was not in itself unlawful, the complainants were not entitled to the retroactive correction of pay that each of them claimed. FAO's sensible precaution of putting in its budget the wherewithal to execute a ruling in their favour was obviously no argument in support of their case. In sum, there was neither mistake of law nor bad faith in applying decisions by the Commission that were lawful. The complaints were dismissed.

7. JUDGEMENT NO. 1634 (10 JULY 1997): GAWLITTA V. EUROPEAN MOLECULAR BIOLOGY LABORATORY

*Termination of appointment—Intention of the parties determines interpretation and the application of the contract—Terms of contract are not superior in rank over Staff Rules and Regulations*

The European Molecular Biology Laboratory (EMBL) employed the complainant as from 1 January 1991 under a contract dated 5 December 1990. That contract described his "Category of Personnel" as "Supernumerary Employee (A)-S1" and his function as that of a "Bookkeeping Assistant" at grade 2-0; it set a probationary period of six months; and it provided for termination after that period without any statement of reasons by the giving of six weeks' notice. It did not state the duration of the contract. It said that the contract was subject to the Staff Rules and Regulations as well as to the internal guidelines and rules issued by the Director-General.

The complainant received regular advancements in step on the completion of probation and on every anniversary of his appointment up to 1 January 1994, but in 1995 his step increase was withheld for a short period of time until he had fulfilled specified requirements, which he had done in April 1995. And on 1 May 1995, he was granted a promotion to "4-04", which had until then been withheld.

In a memorandum dated 18 April 1995, the head of Personnel informed him of his transfer from the Finance department to Personnel. In that memorandum, the "Category of Personnel" was described as "Administrative Officer of Paying Office" and not as "Supernumerary". EMBL did not, however, carry out the transfer but decided instead to keep him in Finance, "where he could draw on his experience of the work and consolidate on a recent performance that had been considered satisfactory enough to grant him a step increase to 4-04".

By a memorandum dated 8 December 1995, the head of Personnel gave him a six weeks' notice of termination without any statement of reasons, and on 27 December, he filed an appeal challenging the validity of the notice on the grounds that it had been signed by the head of Personnel, and not, as staff regulation R.2.1.02 required, by the Director-General; that it did not, as staff regulation R.2.6.06 required, state the reasons for termination; and that the termination, for which there was in fact no cause, was in breach of good faith.

The Tribunal noted that in its report of 20 May 1995 to the Director-General the Joint Advisory Appeals Board had concluded that, though the accuracy and quality of the complainant's work were undisputed, relations between him and his first-level supervisor had irretrievably broken down, partly because he "could be seen to be overqualified for his post". The Board observed that contracts for supernumeraries were beginning to be widely used to relieve difficulties caused by limits imposed on EMBL in the recruitment of staff; that while they "were originally intended to apply to short-term positions", they were more and more being applied to "long-term employment . . . in administrative, secretarial and other posts" and that they were "inappropriate for long-term employment" by EMBL and "should be eliminated as quickly as possible". The Board considered the contract between the complainant and EMBL to be "inappropriate for the period of his employment" and that its termination conditions were suitable only for a contract not exceeding one year and expressed dismay "that a person could be employed for five years on a contract with such poor personal protection". It concluded, however, that the parties were bound by the contract which they had signed and that EMBL had acted strictly in accordance with its terms.

At the Tribunal level, EMBL pleaded that under staff rule 1.1.01 its legal relationship with each employee was governed by the Staff Rules, the Staff Regulations and the contract. The contract concluded with the complainant provided for termination with due notice, but without any statement of reasons, and declared him to be a supernumerary employee. Not only had he accepted those terms at the time, but he had not challenged them even later by internal appeal. Nor can he have assumed that his contractual relationship with the Laboratory had undergone any fundamental legal change by the passage of time.

The Tribunal recalled its Judgement 701 (*in re Bustos*), in which it had held:

"The function of a court of law is to interpret and apply a contract in accordance with the intention of the parties. When a contract is expressed in writing, the intention is normally to be ascertained from the documents produced. In some cases, however, the parties—or at any rate the party which is in a position to formulate the document—do not desire that the true relationship should be revealed. The reason for this is that, if the true relationship was made manifest, the law would impose consequences which the parties—or at any rate the stronger of them—do not wish to face."

And in Judgement 1385 (*in re Burt*), in which the Tribunal had looked behind the wording of a written contract on the grounds that it was merely a device

to deny the employee the protection of the rules, it had given effect to the real intention of the parties.

The Tribunal noted that supernumeraries were casual workers employed to carry out a certain task for a limited period of time, and that the duration must be shown in the contract and be not more than 12 months, though an exception was allowable in special circumstances. Furthermore, the Staff Regulations prescribed for each type of contract periods of notice applicable to resignation, termination and dismissal, but with the proviso that they might be reduced by mutual agreement. Under regulation R.2.6.06, every "member of the personnel" was entitled to be "notified of his dismissal in a letter indicating the reason or reasons, the date of termination of his contract and the date of the last day to be worked". There was no provision for any exclusion or exception. Moreover, it was the Director-General's duty under regulation R.2.1.11 to ensure that every supernumerary received a written contract which specified, among other matters, the category of personnel to which he belonged, the classification of his work or the function to be performed, and a period of probation not to exceed three months.

In the present case, the Tribunal considered that the basic terms and conditions of the complainant's contract—particularly as regards the nature of the work, the length of probation, and the failure to state a duration not exceeding the 12 months—made it fundamentally inconsistent with supernumerary employment of the kind contemplated by the Staff Rules and Regulations. Whatever doubt there might have been at the outset, it was quite clear by April 1995 that the complainant was not regarded as a supernumerary; his work was in no sense casual or temporary, he had received regular advancement and his transfer to another department had been proposed.

Relying on staff rule 1.1.01, the Laboratory had contended that the terms of the contract prevailed over the Staff Rules and Regulations on the grounds that the latter were not "given a superior rank over the provisions in the individual contract". The Tribunal rejected the contention. Not only was the Director-General bound to abide by the Staff Rules and Regulations, but the contract itself recognised that it was subject to the Staff Rules and Regulations.

The Tribunal also noted that the report of the Joint Advisory Appeals Board showed that EMBL was resorting to the grant of supernumerary contracts even for long-term regular employment as a device to circumvent limits imposed on the recruitment of staff and was so formulating the contracts as to conceal its true relationship with the employees. It had not specifically denied this. Indeed in its reply it accepted that "the present situation of supernumeraries is unsatisfactory" and stated that changes were under consideration. The provision for termination without any statement of reasons and on six weeks' notice was an integral part of the device that it adopted.

Therefore, in the view of the Tribunal, the term "supernumerary employee" must be disregarded because it was inconsistent with the parties' intent as expressed in the terms and conditions of the contract as well as with the Staff Rules and Regulations. Accordingly, the Tribunal held that in December 1995, the complainant was not a supernumerary and so his appointment could not be terminated without any statement of reasons on six weeks' notice. But neither might he be regarded as a staff member on a fixed-term, open-ended or indefinite contract. He had no right to the renewal of his appointment, and it did not appear from the evidence that the Laboratory would have renewed it had the proper procedure been followed.

The Tribunal concluded that the intention that both parties had formed, if not at the beginning, then at the latest by 1995, was, to quote Judgement 701, that “the complainant should be employed for as long as his services were required and he was willing to give them”, and that to an agreement of that character “the law adds the term that reasonable notice of termination must be given”. The complainant was entitled to an award of damages for the lack of such notice, and the amount is set *ex aequo et bono* at 35,000 German marks. He also was awarded costs of 8,000 marks.

8. JUDGEMENT NO. 1647 (10 JULY 1997): BOMBO N'DJIMBI V. WORLD HEALTH ORGANIZATION

*Request for upgrading of post—Basic principles of post classification—Upgrading of post is a discretionary decision subject to limited review by Tribunal—Question of prejudice—Question of term of special duty allowance*

WHO appointed the complainant on 1 March 1982 to post 3.2764 in its regional office in Brazzaville as a clerk-typist at grade BZ.5. It upgraded his post and so promoted him to BZ.6 on 1 June 1982. On 1 July 1986, it had him take on for 12 months the duties of a post for an administrative assistant, No. 3.0069, that was a graded BZ.9. In November 1987, it put a revised description of his own post, 3.2764, to the Standing Committee on Reclassification of Posts with a recommendation from his supervisor for its upgrading to BZ.9. It thereupon rose to the level of BZ.7 as from 1 December 1987. After further applications for upgrading to BZ.9 the Standing Committee recommended on 30 August 1990 that the grade level should be maintained at BZ.7. The Regional Director agreed. In August 1991, the complainant once again applied for a reclassification to BZ.9, but the Committee recommended an upgrading only to grade BZ.8. By a decision of 19 March 1992 the complainant was promoted to grade BZ.8 as from 1 March 1992.

He appealed, claiming the upgrading of his post to BZ.9 from 1987 to 1990 and to BZ.10 from 1990 to 1995.

In support of his claim to upgrading, the complainant, *inter alia*, cited his supervisor's recommendations and his competent and devoted performance of the duties of the post to which he was temporarily assigned, post 3.0069.

The Tribunal was of the opinion that those arguments were irrelevant. It considered that the basic rules on grading were reflected in Manual paragraph II.1.30, which read:

“The following basic principles of post classification must be adhered to:

- 30.1 There should be equal pay for work of equal value;
- 30.2 Posts of approximately equal difficulty and responsibility should be placed in the same grade;
- 30.3 A change in the grade of a post should result only when a significant change in the level of its duties and responsibilities has occurred;
- 30.4 The grading of a post depends upon the assigned duties and responsibilities required and not on the qualifications, job performance, seniority or other characteristics of an incumbent.”

In other words, the Tribunal noted that grading hinged neither on quality of performance nor on seniority. The sole criteria were the duties and responsibilities of the post, and the grade could not change unless there was a "significant change in level".

Moreover, citing Judgements 1067 (*in re Glenn*) and 1152 (*in re Korolevich*), the Tribunal made the point that upgrading required close familiarity with the conditions in which the staff member worked. The assessment of the type of work performed and the level of responsibility was a value judgement, and only those whose training and experience equipped them for the task might make such an assessment. The decision was therefore a discretionary one, and subject to review only on limited grounds, and would not ordinarily be set aside unless it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or overlooked some essential fact, or was tainted with abuse of authority, or if a clearly mistaken conclusion was drawn from the facts. Consistent precedent had it that the Tribunal would not substitute its own assessment or direct that a new one should be made unless it was satisfied on the evidence that there was a fatal flaw of that kind. So the complainant's performance of his temporary duties, even though his supervisor thought highly of it, was irrelevant to the question of upgrading his post 3.2764 to BZ.9.

The complainant further argued that the descriptions of two other posts, 3.0624 and 3.3267, which were for administrative assistants and did bear grade BZ.9, included the same duties as his own. He objected to the upgrading of a BZ.8 post for an assistant to BZ.9 only six months after the holder of that post had joined the unit. He inferred that the boards were prejudiced against him.

The Tribunal considered that whether posts were much the same was an issue of fact. The regional Board said that it had made a thorough review of the descriptions of various posts that had formerly been graded BZ.7, BZ.8 and BZ.9 and had compared post 3.2764 with posts 3.0069 and 3.0624. It had come to the conclusion that the duties of the latter two were more important and that the Standing Committee on Reclassification of Posts had been right to upgrade 3.2764 in 1987 to BZ.7 and in 1992 to BZ.8. Even supposing that someone else at grade BZ.8 did rise swiftly to BZ.9, his case differed in that he was already on a BZ.8 post whereas the complainant was claiming promotion from BZ.6 to BZ.9. There being no evidence to cast any doubt on the regional Board's findings and conclusions, the Tribunal held that the comparison the Board had made did not bear out the charge of prejudice. It concluded that there was no fatal flaw in the decision not to upgrade the complainant's post.

The complainant had also claimed payment of the special duty allowance up to 31 July 1995, when he had taken early retirement, on the grounds that he had continued performing the duties of post 3.0069 until that date, the defendant having failed to tell him that he was not to do so.

The Tribunal noted that a post at a higher grade than that of the staff member might not in any event exceed 12 months and that it was only from the fourth month that the staff member had been paid the special allowance. The defendant argued that a personnel action form dated 10 June 1987 had informed the complainant that he would not receive the allowance after 1 July 1987, i.e., at the end of the maximum period of 12 months allowed in staff rule 320.4. Such forms, in accordance with Manual paragraph II.4.150, were sent to staff members to inform them of any change in their contractual situation or entitlements. And it was that form that, according to rule 580.1, constituted "an amendment to the terms of ap-

pointment under rule 440.3". That was how the headquarters Board of Appeal had construed the rules: it had held that the personnel action form sufficed to tell the complainant that the temporary attribution of the other duties was to end. The Tribunal held that, there being no reason to depart from that view, the complainant's plea could not be sustained.

The complaint was dismissed.

9. JUDGEMENT NO. 1653 (10 JULY 1997): EFFÉIAN V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

*Termination of special post allowance—Question of explanation of internal appeals—Question of time limits for submission of appeal—Dissenting opinion regarding exhaustion of international appeals and merits of the case*

The complainant joined the staff of UNESCO on 1 July 1979 at step 1 in grade G.3. The organization regularly renewed her fixed-term appointment until 31 January 1995, when she took retirement. Her post, BXR-068, was upgraded to G.4 as from 1 July 1988 and to G.5 as from 1 July 1993. As from 1 February 1991, she was required to perform some of the duties of another post, BRX-067, which was graded P.1/P.2 and was vacant. She was accordingly granted the special post allowance provided for in the Staff Rules at grade P.1/P.2 as from 1 May 1991. A personnel action form dated 2 September 1994 terminated payment of the allowance effective 1 July 1993. On 9 September 1994, she requested from the Director of the Bureau of Personnel that the allowance should be continued from 1 July 1993 until 31 January 1995. The Assistant Director-General for External Relations interceded in her favour with the Director of the Bureau of Personnel. The Director answered him in a memorandum of 22 November 1994 that, according to a technical assessment by the classification section of the Bureau of Personnel, the duties of post 67 which the complainant had been performing warranted only grade G.5; there was thus no question of allowing her to receive the allowance at any higher grade.

The Assistant Director-General sent another memorandum on 10 February 1995 and the Director of Personnel answered on 3 March that she would not change her decision. On 19 May, the complainant wrote a letter to the Director-General asking him to intercede. On 7 September, the Acting Director-General answered that the complainant was not to receive the allowance after 1 July 1993. On 27 October 1995, the complainant filed a notice of appeal with the Appeals Board, and on 5 February 1996, her detailed statement of appeal. In its report of 5 July 1996, the Board recommended rejection. By a decision of 4 October 1996, the Director-General endorsed that recommendation, and the complainant appealed to the Tribunal.

The organization submitted that the complaint was irreceivable on the grounds that the complainant had failed to comply with the rules on internal appeal and in particular with the time limits for appeal to the Director-General and in the internal appeal proceeding.

The Tribunal pointed out that, according to article VII, paragraph 1, of its statute, a complaint "shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations". Thus, where the staff regulations laid down a procedure for internal appeal it must be duly followed: there must be compliance not only with the set time limits but also with any rules of procedure in the regulations or implementing rules.



The Staff Regulations and Staff Rules of UNESCO laid down an internal appeal procedure, and paragraphs 7(a) and (c) and 10 of the statutes of the Appeals Board contain the particulars. Thus paragraph 7(a) reads:

“A staff member who wishes to contest any administrative decision or disciplinary action shall first protest against it in writing. The protest shall be addressed to the Director-General through the Director of the Bureau of Personnel, within a period of one month of the date of receipt of the decision or of the action contested by the staff member if he is stationed at headquarters . . .”

In support of its objection to receivability, the organization pointed out, first, that the complainant had failed to address a “protest” to the Director-General through the Director of the Bureau of Personnel, but had merely sent him her letter of 19 May 1995, which was no “protest” within the meaning of 7(a); and, secondly, that it was out of time anyway.

The Tribunal held that the first argument failed. It considered that the complainant had duly addressed her letter of 19 May 1995 to the Director-General in the form of a protest within the meaning of paragraph 7(a). Although she had sent it to him directly and not through the Director of the Bureau of Personnel, staff rule 101.1 conferred upon a staff member the right of “access to the Director-General, normally through established supervisory channels, but exceptionally and for sufficient reason, directly”. This was just such an exceptional case. On 9 September 1994, the complainant had addressed an appeal to the Director of the Bureau of Personnel who, instead of forwarding it to the Director-General, had passed it on to the Assistant Director-General for External Relations. The Assistant Director-General had interceded twice on her behalf, but to no avail. So she was free to conclude that in the circumstances she had no choice but to go directly to the Director-General. Indeed the Director-General had not demurred. As for her letter 19 May 1995, it was hardly arguable that its purpose was to protest against the decision notified in September 1994 to stop paying her the allowance.

The defendant’s second argument was that the complainant missed the time limit of one month in paragraph 7(a) for addressing her protest to the Director-General. On this contention, the Tribunal noted that since the decision to stop the allowance had been notified on 2 September 1994, the deadline was long past by 19 May 1995, when she made her protest. The Tribunal considered that the argument was unanswerable. It noted that it was true that she had begun with an appeal of 9 September 1994 to the Director of the Bureau of Personnel, who was supposed to forward it to the Director-General: see Judgement 1259 (*in re Camara*). And the fact that the Director had forwarded it instead to the Assistant Director-General for External Relations might conceivably have had the effect of suspending the time limit. But the Assistant Director-General had written his memorandum of 10 February 1995 and the Director of Personnel had taken her decision on 3 March 1995; so the time limit had started again to run at the latter date. Even on that assumption the complainant’s appeal of 19 May 1995 to the Director-General was, however, too late.

The defendant further argued that the complainant had failed to supply her detailed appeal within the time limit in paragraph 10 of the Appeals Board’s statutes, i.e., “within one month of the notice of appeal”: she did not supply it until 5 February 1996. The complainant explained that the secretary of the Appeals Board had asked her not to enter her detailed appeal before receiving acknowledgement of receipt of the notice, and she did not receive such acknowledgement until 31 January 1996. That was borne out by the secretary’s letter of 9 January

1996, which said: “. . . your detailed appeal must reach me by. . . 9 February 1996”. The Board itself did not take the view that the complainant had been late in filing her detailed appeal. The organization’s plea that the complainant had failed to abide by paragraph 10 was therefore not upheld.

The Tribunal, however, concluded that the protest against the decision of 2 September 1994 was outside the time limit in paragraph 7(a). The complaint was therefore irreceivable, the internal remedies not having been exhausted.

In a dissenting opinion, one of the judges in the case endorsed the decision, but on different grounds. He considered that while the complainant missed the time limits, her case might be distinguished from earlier ones in which the Tribunal had held that the internal remedies had not been exhausted: see Judgement 995 (*in re Agbo*); 1132 (*in re Bakker No. 2*); 1140 (*in re Rosen*); and 1181 (*in re el Ghabbach No. 3*). In the present case the decision-making authorities of UNESCO had not declared the internal appeals time-barred and therefore irreceivable, but had rejected them on the merits. In its report of 5 July 1996, the Appeals Board had not ruled on the administration’s plea that the appeal was out of time but had recommended rejection on the merits. And in his decision of 4 October 1996, the Director-General had endorsed that recommendation. He had done so after seeing a further report made in August 1996 by the head of the classification section of the Bureau of Personnel, and so had all the material evidence at his disposal for deciding on the matter. It is indeed scarcely arguable that as the executive head of the Organization the Director-General was competent to determine whether the staff member had been unfairly treated. Where the system of appeal required that remedies available in law before some other body should be first exhausted, the purpose was to relieve the higher authority of going into the merits of a dispute which could have been put to the lower authority first but had not been and to respect the competence of the lower authority. The requirement was met when the lower authority had gone into the merits even if according to its own rules it was wrong to do so. Any other approach would prove needlessly troublesome to the would-be appellant. In the present case the organization was pleading failure to exhaust the internal remedies on the grounds that its acting Director-General and then the Director-General ought to have declared the appeals irreceivable. But since its shift in attitude was prejudicial to the other party, it was estopped from so pleading: *venire non licet contra factum proprium*.

In any event, the dissenting judge was of the opinion that the complaint was devoid of merit. What the complainant was objecting to was the grading of the duties of post 67 that she was performing. According to the case law, such grading might be made only by those whose training and experience qualified them for the exercise. The Tribunal would not substitute its own assessment and might exercise only a limited power of review in the matter: see Judgement 591 (*in re Garcia*). The classification section of the Bureau of Personnel had graded the duties that the complainant was performing in line with the relevant grading standards. A fuller assessment which the head of the section had made for the Director-General in August 1996 had come to the same conclusion. And the complainant had offered no plea to warrant setting the assessment aside.

There was no strict rule as to whether a particular duty belonged to the Professional or to the General Service category. That too was a matter within the discretion of the grading officers, and so was their assessment; see Judgement 606 (*in re Polacchi*). The evidence that the complainant was relying upon did not suggest that there was any fatal flaw in the impugned decision.

10. JUDGEMENT NO. 1668 (10 JULY 1997): BARDI CEVALLOS V. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

*Application for review of judgement—Judgements are res judicata—Standards for review of previous judgements*

The complainant sought review of Judgement 1525 of 11 July 1996, whereby the Tribunal had set aside a decision by the Director-General of UNESCO and referred the complainant back to the organization “for reconsideration of his right to renewal of appointment”. The decision not to renew his appointment had showed a procedural flaw in that it had been taken before the Senior Personnel Advisory Board (SPAB) had expressed an opinion on his case. What was required, according to the Tribunal, was a new decision after SPAB had expressed its views.

In consideration of the application for review, the Tribunal noted that its judgements carried the authority of *res judicata* and only in quite exceptional circumstances would it review them. Several pleas for review were inadmissible, such as a mistake of law or a misreading of the evidence. Other pleas might be admissible provided that they were material to the Tribunal’s ruling. They included the overlooking of some material fact, or a material error, i.e., a mistaken finding of fact which called for no appraisal and which was to be distinguished on that score from a misreading of the evidence: see for example Judgements 442 (*in re Villega No. 4*), 1309 (*in re Ahmad No. 3*) and 1353 (*in re Louis No. 4*).

The organization had first argued that the Tribunal had committed a mistake of fact in Judgement 1525. It held that the procedure to be followed before SPAB was governed by the Rules of Procedure of Personnel Advisory Boards in their version dated 20 November 1967, the one in force at the material time. The organization pointed out that that version had been repeated by circular 1751 of 16 January 1991. Only an excerpt of that circular had been submitted to the Tribunal. A new version of the Rules had come into force on 19 July 1995, i.e., at a date subsequent to the material facts.

The Tribunal pointed out that it did not keep a full stock of the rules on the functioning of the organization. At its session in May 1996, it had wanted to consult the text of the Board’s Rules of Procedure for the purpose of entertaining the defendant’s objections as to the competence of that body. It had applied to the secretariat of the organization for the text and was sent by fax the text of 19 July 1995. It then asked for the text of the Rules of 20 November 1967 in their English and French versions. The organization did not, however, tell it of the date of repeal of the 1967 Rules or explain that for some time the procedure of the Board had not been governed by any written rules at all. The Tribunal therefore considered that any mistake on that score in Judgement 1525 was attributable to the organization’s failure to provide full information. In any event it was immaterial to the outcome. Even though the complainant cited the Rules of Procedure in support of his contention that the Board was entitled thereunder to ask for and obtain certain information before giving its views, the Tribunal noted that even in the absence of written Rules of Procedure the Board had continued to function in accordance with unwritten rules that were akin both to those that had been in force earlier and to those that had come into force later. That was borne out by what the organization had said in its rejoinder about the reasons for the repeal of the old Rules and their eventual replacement by the new ones. Any mistake of fact there might have been was therefore irrelevant to the ratio of the judgement.

The organization further objected to the statement in the judgement that it was common ground that the Rules of 20 November 1967 were the material provisions. It pointed out that neither of the parties had taken up the issue. The Tribunal, however, continued to rely on the information supplied by UNESCO in holding that those Rules did apply. In the absence of comment from the parties, it inferred that there were no objections to the relevance of those rules.

The organization's second plea was that there was a mistaken conclusion that the Board was some sort of decision-making body that had to sort out staff problems, whereas in fact there was no such thing as co-management.

The Tribunal noted that since what the organization was pleading was a mistake of law, its plea was inadmissible. It was wrong anyway, since the Tribunal did not hold that the Board was a decision-making body, but merely that it gave its opinion in the context of a procedure aimed at finding fair expedients.

Thirdly, the organization argued that the Tribunal had misconstrued Judgement 969 (*in re Navarro*). It had interpreted the passage in that judgement under paragraph 21 starting "As for the failure of the headquarters Board of Appeal to make any recommendation" to mean that the Director-General was free to take a decision without any recommendation from the Senior Personnel Advisory Board.

The Tribunal held that here again the organization was pleading a mistake of law, and that was not admissible. The plea was also devoid of merit. The passage in question must be read in full and in context. Moreover, Judgement 1525 showed that the material issue was not the same in the present case as in *Navarro* since in the present case the lack of the prior opinion was due solely to the Administration's failure to let the Board have the information it had requested.

UNESCO's fourth plea was that the Tribunal had misread and misapplied Judgement 1289 (*in re Enamoneta*). It argued that in the present case, as in that one, the Personnel Advisory Board had expressed an opinion—namely that not enough had been done to look for another post—and so the Director-General was free to dispense with any formal recommendation, the Board having expressed its opinion.

According to the Tribunal, this argument again went to an issue of law and was an inadmissible plea. It was also devoid of merit. Contrary to what UNESCO contended, SPAB was entitled to seek information on the possibilities of redeploying Mr. Bardi Cevallos and the Administration had failed to answer, though the request was quite reasonable, as the Board needed the information to enable it to make a decision. The Board could not properly be accused of meddling in the area of the Director-General's own competence.

The organization's fifth and last plea was that the Tribunal should not have sent the complainant's case back "for reconsideration of his right to renewal of appointment". It maintained that a fixed-term appointment conferred no "right" to renewal of an appointment. The Tribunal held that the plea again went to the law and was not one that the Tribunal would entertain. Besides, the organization was mistaken. The Tribunal had not said that the complainant had any right to renewal; it had merely ordered the organization to take a new decision on the issue in accordance with due process.

For the above reasons, the organization was required to follow the procedure ordered in Judgement 1525 and take a new decision, and the organization was ordered to pay the complainant 5,000 French francs in costs.

### C. Decisions of the World Bank Administrative Tribunal<sup>17</sup>

#### 1. DECISION NO. 158 (11 APRIL 1997): THOMAS DANIEL SMITH V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT<sup>18</sup>

*Termination because of misconduct due to failure to pay taxes and certify that taxes were up to date—Question of serious misconduct—Proportionality of penalty—Issue of remedy, including consequences of reinstatement*

The Applicant joined the Bank on 10 October 1978 as a Mover in the Administrative Services Department, on a regular appointment. In the following years, he was reassigned and promoted, and from 1991 until the termination of his appointment the Applicant held the position of Web Pressman in the General Services Department.

The Applicant, a United States national entitled to tax reimbursement, on three occasions falsely completed Tax Allowance Certificate forms applying for such reimbursement and consequently received from the Bank sums which he should have used to pay his taxes, but did not. The Applicant also fell into arrears with the payment of both his federal and his state income taxes, a situation which led the Internal Revenue Service (IRS) in 1994 to request the Bank to attach part of the Applicant's salary to meet his obligations. Having regard to its immunity, the Bank declined to comply with this request. The Applicant had committed a similar violation of the Bank's Rules in 1985 and had at that time been warned in writing that a further occurrence of the same kind could lead to the termination of his employment. On the second occasion, the Bank terminated the Applicant's employment, and the Applicant appealed.

The Tribunal noted that staff rule 6.04 on "Tax Allowance" provided that "all staff members who are citizens of the United States . . . may apply for a tax allowance". The same rule provided in paragraph 2.01 that "[a] staff member is required by the Bank Group to pay timely all income and social security taxes due from time to time . . . The payment of such taxes was a condition of the staff member's receiving a payment of tax allowance or social security tax reimbursement". It was evident that the Applicant had acted in breach of this condition by diverting to his own use sums paid to him by the Bank for the sole purpose of meeting his tax obligations.

The Applicant argued that his conduct did not constitute serious misconduct under staff rule 8.01, as alleged by the Respondent, and that the severity of the penalty imposed by the Bank was disproportionate to the offence committed.

Regarding the Applicant's first contention, the Tribunal agreed with the Respondent that staff members entitled to tax reimbursement should honestly fulfil their duties to the tax authorities in the United States. This was a matter in which the Bank had a legitimate interest and was not a matter exclusively between the staff member and the tax authorities. The tax reimbursement was not, as the Applicant had alleged, simply part of the staff member's income, but rather a payment directly related to the staff member's United States tax obligations and its payment was clearly conditional upon the amount being used by the staff member for the payment of tax and for no other purpose. It was therefore, in the view of the Tribunal, appropriate for the Bank to regard as serious misconduct the Applicant's misuse of the payments made to him for the purpose of tax reimbursement, as well as the making by the Applicant of false statements to the effect that the payments had been or would be used for the purpose of paying tax.

As to the argument that the disciplinary measure imposed by the Bank was disproportionate to the wrong done, the Tribunal first recalled staff rule 8.01, paragraph 4.01, of the Staff Rules, which provided that:

“Disciplinary measures imposed by the Bank Group on a staff member shall be determined on a case-by-case basis, taking into account the seriousness of the matter, extenuating circumstances, the situation of the staff member, the interests of the Bank Group and the frequency of conduct for which disciplinary measures may be imposed . . .”

The provision was reflected in the concept of “proportionality”, which was well established in the case law of the present as well as other administrative tribunals.

In consideration of the issue, the Tribunal noted that the Bank had given consideration to some factors relevant to the assessment of the proportionality of the punishment of the offence. The recommendation made by the Ethics Officer to the Director of the Personnel Management Department, on 26 January 1995, stated that account had been taken in particular of the fact that it was a second offence, that fraud was involved, that the total amount owing was substantive and that the combined income of the Applicant and his wife (also employed in the Bank Group) was substantive. But, as the Tribunal noted, at that stage no indication was given that other relevant personal circumstances of the Applicant had been considered, which, subsequently, in requesting administrative review of the Bank’s decision the Applicant had set out in great detail. When eventually the decision to terminate was confirmed, the Bank had stated that it had taken into account the personal circumstances of the Applicant in the light of Bank policy and past practice.

This determination by the Bank was, however, not conclusive, and the Tribunal was entitled to review that determination and assess whether the conclusion that the Applicant’s employment should be terminated was reasonably related to the nature and severity of the offence. In that respect, the Tribunal, taking into account its own past practice as shown in cases such as *Carew* (Decision No. 142, 1995) and *Planthara* (Decision No. 143, 1995), found that it had reached a conclusion different from that of the Bank. Although the Tribunal agreed with the Bank that the Applicant’s behaviour amounted to serious misconduct, it felt that dismissal was too severe under the circumstances. The Tribunal noted in particular three factors to which the Bank did not appear to have given sufficient weight: (a) the Applicant had served the Bank for 16 years; (b) the Applicant, without prompting from the Bank and before his misconduct was brought to the attention of the Bank, had entered into agreements with the United States Internal Revenue Service and the State of Virginia tax authorities for a schedule of deferred payments of tax, which indicated that the Applicant was making a genuine effort to cope with his tax payments; and (c) the initial decision on the part of the Bank to dismiss the Applicant had been taken at the same time as the Bank was seeking to reduce the number of staff employed in its printing services and, if the Bank had adopted any other sanction than dismissal, the Applicant would in November 1994 have been able to obtain a separation package involving some element of redundancy payment additional to the separation allowance paid to him, which could, presumably, have helped the Applicant to meet his outstanding tax obligations, which as the Tribunal noted had not been discharged despite the disciplinary measure imposed on him by the Bank.

As the Tribunal had concluded that the Bank’s selection of the most extreme measure available to it was excessively harsh, article XII (1) of the Tribunal’s

statute required it to order rescission of the decision contested or the specific performance of the obligation invoked, or to fix the amount of compensation to be paid to the Applicant for the injury sustained should the Bank decide that the Applicant should be compensated without further action being taken in the case.

The rescission of the Respondent's decision to terminate the Applicant's employment entailed certain logical consequences, including his reinstatement in his former position and the restoration of his employment benefits to the level they would have been had his employment not been terminated. But if this were done it carried with it the obligation of the Applicant to repay to the Bank the sums received by him from the Bank in connection with his separation, as well as the revival of the Bank's right to impose upon the Applicant a disciplinary measure proportionate to the Applicant's established misconduct.

Should the President of the Bank decide that the Applicant should be compensated without further action being taken in the case, the Tribunal fixed the amount of compensation at \$25,000 additional to the payments already made to the Applicant at the time of his separation, and ordered payment of \$3,000 in costs.

2. DECISION NO. 164 (10 JUNE 1997): RALPH ROMAN (No. 2) v. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT<sup>19</sup>

*Complaint against performance review report for 1993—Limited review of discretionary nature of staff member's performance evaluation—All relevant and significant facts should be taken into account when assessing staff member's performance*

The Applicant, who began his service with the Bank on 2 July 1973, returned from an external service assignment with UNESCO in January 1989. He re-entered service with the Bank as a Principal Education Specialist, level 25, in the Population and Human Resources Department (PHR). In the Applicant's 1989/90 performance review report (PRR) the Division Chief, Education and Employment Division (PHREE), expressed his dissatisfaction with the Applicant's work for that period and gave him a performance rating of "unsatisfactory". The Applicant requested an administrative review of his performance rating and, as a result, his rating was upgraded to "satisfactory" and his salary review increase was revised upward.

During the period from 1 July 1990 to 31 March 1991, the Applicant worked on a temporary assignment in Division 1 of the Operations Evaluation Department (OEDD1) as a Principal Evaluation Officer, level 25. The Division Chief, OEDD1, assessed the Applicant's performance in the 1990/91 PRR as fully satisfactory. The Applicant's assignment in OEDD1 was thereafter extended for one additional year. In his PRR for the period from 1 April 1991 to 31 March 1992, the Applicant's Division Chief stated that the output of the Applicant's two years' work in OED was problematic and that he had failed to show the leadership expected of a senior officer. The Applicant requested an administrative review of the report and subsequently filed an appeal with the Appeals Committee. The Appeals Committee recommended that the Applicant's request to have the comment concerning leadership deleted from his PRR should be granted and that his Division Chief should be advised of the need to provide some frequent and structured feedback on performance, particularly where some aspects of performance were judged below expectations. The Vice-President, Personnel and Administration,

accepted the recommendation. The Applicant returned to PHREE on 1 July 1992, but was officially on loan to OEDD1 up to 31 August 1992.

The present application before the Tribunal concerned the Applicant's 1 April 1992 to 31 March 1993 performance review report, which spanned five months in the Operations Evaluation Department, Division 1 (OEDD1), and seven months in the Population and Human Resources Department, Education and Employment Division (PHREE)—“the 1993 PRR”. In the staff member's Summary Assessment section of the 1993 PRR (section I), the Applicant had outlined his work in both OED and PHREE. In OED, his tasks had involved, *inter alia*, audits and work on an Africa human resources study; and, in connection with his work in PHREE, the Applicant had prepared an “approach paper” relating to his work on the “education management” contribution to the intended sector policy paper for fiscal year 1995 and had convened a meeting of PHREE staff to discuss it.

The supervisor responsible for the 1993 PRR was the Policy Adviser, Education and Social Policy Department, who had been the Division Chief, PHREE, who had already evaluated the Applicant negatively in the 1989/90 PRR (“the Division Chief, PHREE”). He assessed the Applicant's performance for the 1993 PRR as falling short of that expected of staff of his level and experience in terms of sectoral leadership, policy work or operational support. He stated, *inter alia*, that the general view of the meeting which had reviewed the approach paper was that it lacked an adequate conceptual framework and needed substantial revisions. It was noted that the Applicant had produced a revised version, but that the second draft had been held in abeyance pending the preparation of the first business plan under the new organizational structure. The Applicant's supervisor further noted that he had expected the Applicant to be involved in several operational support tasks, but that the Applicant's operational support had been limited to eight staff weeks in one country (Uzbekistan). The Applicant had in his performance plan proposed 19 weeks of operational support, including the Caribbean and Zambia.

In an attached supplemental review of the Applicant's performance, the Division Chief, OEDD1, who as a result of an Appeals Committee recommendation had deleted his comments concerning the lack of leadership of the Applicant in the 1991/92 PRR, was of the view that the 1992 draft of the Africa human resources study prepared by the Applicant was inadequate by the Bank's standards. He noted that this was acknowledged by the Applicant when he said that its release had been premature. He further noted that the Applicant had been working on a revised draft of his chapter for the study.

The Applicant objected to his supervisors' review of his performance and set forth in writing his comments on their assessments.

In their review of the 1993 PRR comments of the Applicant and his supervisors, the Management Review Group agreed with the assessment of the Division Chief, PHREE, that the Applicant's performance had not met the expectations for staff of his level and experience. For that reason, the Group had determined that the Applicant's recent salary merit award should reflect an unsatisfactory performance rating. It was also decided that the Applicant's performance would be monitored and evaluated in accordance with staff rule 5.03, paragraph 2.02.

The Applicant sought administrative review of the decision. The decision was confirmed. Thereafter, the Applicant appealed to the Appeals Committee which, by a majority decision, rejected the appeal, and he appealed to the Tribu-



nal, requesting the rescission of the 1993 PRR and the merit award based on it. The Applicant's main contention was that the evaluations of his performance, both by the Division Chief of OEDD1 and by the Division Chief of PHREE, were incomplete, biased and tainted by both inaccuracies and misleading statements.

The Tribunal recalled that it had on many occasions recognized the discretionary nature of the evaluation of staff performance by the management of the Respondent. The Tribunal would only review such an evaluation to determine whether there had been an abuse of discretion in that the decision was arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

In respect of the OEDD1 evaluation covering the first five months of the period under review, the Applicant maintained that it was incomplete because the Division Chief, OEDD1, who had reviewed the Applicant's September 1992 draft chapter which formed part of the Africa human resources study draft report, had not seen the March 1993 revisions to that chapter which the Applicant had sent to the Task Manager under whose direction he worked, rather than to the Division Chief, OEDD1.

The Tribunal noted that the record did not indicate that the Applicant and the Division Chief, OEDD1, had ever discussed the Applicant's progress with regard to the Africa human resources study after or indeed before the Applicant had returned to full-time work with PHREE. Nor did the record indicate whether, and to what extent, the Task Manager had provided the Division Chief with his comments on the Applicant's contribution to the Africa human resources study during the Applicant's assignment in OED or after his return to PHREE.

According to the Applicant's comments on his supervisors' assessment as stated in the 1993 PRR, the Applicant understood from the Task Manager that the Division Chief, OEDD1, had not been given the revised draft submitted by the Applicant to the Task Manager in March 1993 during the period of review. The Division Chief, OEDD1, had not yet read the revised draft when preparing his 22 April 1993 supplementary evaluation and his assessment of the Applicant was thus based only on the earlier draft handed to OEDD1 in September 1992. Furthermore, he had mistakenly concluded from the Applicant's statement in section I of the PRR that the OED draft report of the Africa human resources study had been prematurely released as an acknowledgement by the Applicant that his draft chapter was inadequate. It was beyond doubt, however, that the Applicant was referring to the draft report of the Africa human resources study as a whole, which included his draft chapter which had been altered by the Task Manager. The Task Manager had agreed with the Applicant that the draft chapter should be further edited by the Applicant but unfortunately the draft report had been released in the fall of 1992 by the Division Chief, OEDD1, during the absence of the Task Manager.

The Bank raised the argument that the Division Chief, OEDD1, was not obligated in the review of the Applicant to cover the period after the Applicant's full-time assignment to OEDD1, namely, after 31 August 1992. The Tribunal was of the view that it was the obligation of the Respondent, when assessing the performance of staff members for a given period of review, to take into account all relevant and significant facts that existed for that period of review. The revised draft chapter delivered by the Applicant to OED, whether to his Task Manager or to the Division Chief, OEDD1, in March 1993 was a relevant fact, particularly in view of the weight given by the Division Chief, OEDD1, to the September 1992

draft. The Respondent should have taken the March 1993 draft into account for a full and proper assessment of the Applicant's performance for the period under review.

In view of this conclusion, the Tribunal found it unnecessary to deal with the other contentions of the Applicant.

For the above reasons, the Tribunal decided that both the 1993 PRR and the salary merit award based thereon must be quashed. This conclusion would normally lead to the requirement that the Respondent prepare a new performance review for 1992/93. However, it was impossible for the Tribunal to predict what would be the content of such a review, particularly having regard to the fact that the Applicant had now retired from the Bank's service. The Tribunal therefore ordered that the Respondent compensate the Applicant in the amount of \$5,000 without there being need for any further action by the Respondent. The Tribunal also awarded the Applicant \$3,000 for costs.

3. DECISION NO. 165 (10 JUNE 1997): WILLIAM BRANNIGAN V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT<sup>20</sup>

*Abolition of post—Staff rule 7.01 (abolition in the interest of efficient administration)—Question of substantive differences between old position with any relevant new position—Issue of remedy in the light of loss of full pension and related benefits*

The Applicant complained that his position as Senior Public Information Officer in the External Affairs Department was declared redundant in violation of staff rule 7.01, paragraphs 8.02 and 8.03. He contended that the newly created position of External Affairs Counsellor in the same department (to which he was not appointed) was in essence identical to the one the Applicant had previously occupied and that his position had been abolished by the Respondent not in the interests of efficient administration but in order to allow the recruitment of a younger staff member.

The Tribunal noted that the duties of the Applicant in the Media Division of the External Affairs Department at the time his position was declared redundant included liaising with correspondents and producers of major television and radio news programmes, planning and implementing press promotion for major Bank publications, preparing and operating the press rooms for the spring and annual meetings of the Bank and the International Monetary Fund, summarizing news articles for *Daily Development News*, liaising with the Office of the Vice-President, Development Economics and Chief Economist, and handling day-to-day media enquiries.

In September 1994, a new Director of the External Affairs Department was appointed. At that time, the various functions and staffing levels in the department were reviewed in conjunction with the fiscal year 1996/97 budget guidelines for reductions in the Bank's administrative budget. On 10 January 1995, the Applicant was informed that his position had been declared redundant as of 6 February 1995. The redundancy was based on a redefinition of the role of the department, as a consequence of which there would be a need for "someone with 1995 state-of-the-art television skills". Among other things, interviews for Bank staff on television and radio programmes would be arranged by a junior consultant recently recruited from a broadcasting organization. In addition, *Daily Development News* would be mostly produced in Paris by a trilingual editor and liaison with the Vice-President, Development Economics and Chief Economist,

would be transferred to another team. Day-to-day media enquiries would be handled by several people. In the light of those developments, it was concluded that the Applicant's skills were no longer relevant to the work programme in the Media Division.

On 27 March 1995, the Applicant requested an administrative review of the decision to declare his position redundant, stating, among other things, that his skills and experience matched the qualifications sought by the External Affairs Department and that age discrimination was involved in the decision to make him redundant. However, he was informed that the decision to make him redundant had been taken in accordance with staff rule 7.01, paragraph 8.02(b), as there was an abolition of position, the required process had been followed and the relevant Vice-President had agreed with the decision under review.

The Applicant applied for other Bank positions within the External Affairs Department but was not selected for any of them. He remained in regular pay status through 5 October 1995 and was then placed on special leave through 12 March 1997, thus ending his employment with the Bank some 10 1/2 months before the date on which he would have become entitled to full pension and other retirement benefits under staff rules governing termination. The Applicant appealed.

In consideration of the case, the Tribunal noted that even if the Applicant's post was abolished in the interests of efficient administration, under staff rule 7.01, the question remained whether it had been truly abolished so as to warrant the application of the staff rule. In the view of the Tribunal, this was a matter of comparing the "old" position with any relevant "new" position. To demonstrate the abolition of a position it was not enough that there might have been some differences between the old and new positions; the differences must be ones of substance. The Tribunal had in previous cases emphasized the need for the Bank to show a clear material difference between the new position and the position that had been made redundant (*Fabara-Núñez*, Decision No. 101 (1991); *Arellano*, Decision No. 161 (1997)).

In that regard, the Tribunal noted that the External Affairs Department was indeed subject to a process of reorganization in order to provide a new approach to media relations and to adjust to the introduction of new technologies. That reorganization entailed a number of changes, including the mutually agreed separation of some existing staff members and the recruitment of some new ones. However, in the judgement of the Tribunal, the changes that had been effected in the Applicant's position were not material.

The Tribunal considered that if the substantive work of the Senior Public Information Officer position originally held by the Applicant before redundancy was compared with the new position of External Affairs Counsellor, or even with some of the other positions that became available, a striking similarity could be noted. Many of the responsibilities were substantially the same, particularly as to the requirements of contact and liaison with the media. Although the Bank emphasized the need in the new position for familiarity with new broadcasting technologies, particularly in the television field, it did not explain how that familiarity necessarily extended beyond the requirements of the Applicant's position that he should deal with television and radio broadcasters and journalists.

Nor was the Tribunal persuaded that the transfer of certain functions to other staff positions had materially altered the position previously held by the Applicant. Much of the Respondent's justification of the "abolition" of the Applicant's

position related to the transfer to Paris of the production of *Daily Development News*. However, that particular change did not appear to be significant for several reasons: the assignment had only recently been added to the Applicant's usual duties as an ad hoc task; part of the production of the service remained in Washington; and the Applicant had devoted only a limited proportion of his time to that task. The addition of a foreign language ability to the new position in connection with the production of *Daily Development News* did not appear to be an element which significantly changed the content of the position held by the Applicant. Similarly, the elimination of the responsibility to liaise with the Vice-President and the reassignment to others of specific minor tasks had not changed the essence of the work of the Senior Public Information Officer.

The Tribunal therefore concluded that the decision of the Respondent to declare the Applicant redundant on the basis of the abolition of his position was invalid and must be quashed. Consequently, there was no need for the Tribunal to address the Applicant's further contention that his post had been abolished for an improper motive.

Furthermore, in the opinion of the Tribunal, remedies must also be provided to redress the situation of the Applicant having been made redundant 10 1/2 months before he would have become entitled to a full pension and other related benefits. Therefore, should the President of the Bank decide not to reinstate the Applicant, he should be compensated by bridging him from the end of his remunerated employment to such point in time as would enable him to receive a full pension and corresponding benefits. Such calculations must include the salary lost by the Applicant during such period, less any income net after tax received from other employment. The Tribunal also awarded the Applicant \$5,000 for legal costs.

4. DECISION No. 173 (18 NOVEMBER 1997): CHRISTOPHER NAAB V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

*Complaint against limitation of the consultancy re-employment of staff members who have left the World Bank with a severance package—The Bank's right to change conditions of employment—No right of contractual employment after staff member's termination of appointment—Question of exemption from amended rule 4.01—Complying with due process*

The Applicant was employed by the Bank in a regular position as Technical Assistance Officer in the Western Africa Projects Department from August 1974 to March 1987. In 1987, the Applicant's position was declared redundant under staff rule 7.01, and he left the service of the Bank on 5 March 1987, receiving a severance package under that rule. In July 1989, the Applicant was offered a consultancy appointment for six months in the Asia Technical Department. The Applicant's appointment was extended several times for periods of six months each through July 1993. On 23 June 1993, the Applicant's appointment was extended until 31 July 1994.

The Tribunal noted that when the Applicant's employment had terminated in 1987, staff rule 4.01 contained no time restriction on consultancy appointments of retirees and former staff members whose employment had been terminated because of redundancy or mutual agreement. In April 1994, the Bank amended staff rule 4.01, paragraph 8.03, which limited the consultancy re-employment to 120 work days in any 12 months.

By memorandum to the Director, Personnel Management Department, dated 10 July 1994, the Division Chief, Private/Public Sector and Technology Development Division, Asia Technical Department, sought and obtained for 12 months an exception to the new policy with respect to the Applicant's employment. In support of his request, the Division Chief had stated that, among other things, the Applicant provided specialized services that all departments needed, but that none could afford individually on a full-time basis. He emphasized the Applicant's excellent performance and added that neither the Applicant nor the affected managers had received advance warning of the introduction of the new policy. He requested that an exception be made for the Applicant under a grandfather provision.

The Applicant's appointment was extended until 31 July 1995, and, by a letter dated 1 August 1994, the Applicant was informed by the Deputy Director, Personnel Management Department, of the revision of staff rule 4.01, paragraph 8.03, and how it affected him. The Deputy Director further informed the Applicant that at the time of his next contract renewal after April 1994, the 120-day limit would apply to him.

The Applicant filed an application on 6 February 1996 requesting the Tribunal to direct the Respondent to rescind the amendment of staff rule 4.01, paragraph 8.03. He contended that such limitation and its application to his consultancy re-employment violated an essential element of his conditions of employment. He further requested the Tribunal to direct the Bank to grandfather him from application of the amended rule and also requested compensation in the amount of three years' salary.

In consideration of the case, the Tribunal first considered whether the amended rule 4.01 infringed upon an essential condition of the Applicant's terms of employment. The Applicant had argued that neither when his initial employment was terminated for redundancy in 1987 nor when he was rehired in 1989 was there any rule limiting his continued long-term employment as a consultant. And his right not to be subjected to any restriction on the terms of employment was a fundamental and essential element of his employment which could not be changed without his agreement.

The Tribunal rejected this argument. It noted that in *de Merode* (Decision No. 1 (1981), para. 38) it had held that "the conditions of employment cannot be frozen at the date the staff member joins the Bank" and that "the conditions of employment for which the Tribunal must assure respect are not those which existed at the date of appointment of the claimant but those which exist at the date of the alleged non-observance; it implies, by its very words, possible changes in the conditions of employment". The Tribunal found in that case that "the power to make rules implies in principle the right to amend them" (para. 31).

Furthermore, the Tribunal considered that the fact that at the time the Applicant was hired by the Bank, at the time he was separated with a financial package and at the time he was rehired as a consultant there existed no limitation on the duration of a future consultancy re-employment, did not, per se, constitute an essential element of a staff member's conditions of employment. A staff member had no right to remain indefinitely immune from the application of any limitation the Bank might subsequently impose on future re-employment of such a staff member, provided that such limitation was not imposed in an arbitrary or discriminatory manner. The Tribunal had decided in *Singh* (Decision No. 105 (1991), para. 55) that "as a Consultant, the Applicant has no right of contractual employment by the

Bank after the term of his appointment expired. He may be engaged only if the Bank so determines". In addition, the Tribunal had decided in *Brebion* (Decision No. 159 (1997), para. 33) that the terms and conditions pertaining to the hiring of consultants "cannot generally be considered as 'essential' for the simple reason that normally there shall be no prior commitment as to consultancy arrangements and any contract to this effect will be governed by the Staff Rules in force at the time it is made". In the *Brebion* case, the Tribunal had decided that the Applicant should be exempted from the application of the amended rule 4.01 for the sole reason of the existence of an explicit commitment made by the Bank to that effect. The Tribunal had found the evidence of such a commitment to be overwhelming, so much so that "in the specific circumstances of this case, the 120-day limitation to consultancy employment affects an essential term of the settlement agreement" (para. 38). There was no such commitment in the present case.

Moreover, the Tribunal noted that the Respondent, in its letter of 25 January 1990 informing the Applicant of his consultancy appointment, had stated clearly that the Bank "reserves the right to adjust the terms of the assignment as necessary". On his part, the Applicant in his letter of acceptance dated 1 February 1990 had stated that he accepted the consultancy appointment "under the terms and conditions of employment set forth in my letter of appointment and the policies and procedures of the Bank as at present in effect and as they may be amended from time to time".

The Applicant contended also that the application of amended rule 4.01 to him did not comply with fundamental due process standards. He quoted the statement in *de Merode* that changes, even of non-essential elements of the conditions of employment,

"must be reasonably related to the objective which they are intended to achieve. They must be made in good faith and must not be prompted by improper motives, they must not discriminate in an unjustifiable manner between individuals or groups within the staff. Amendments must be made in a reasonable manner seeking to avoid excessive and unnecessary harm to the staff" (*de Merode*, Decision No. 1, para. 47).

The Tribunal noted that the record did not reveal any motive behind the Respondent's amendment of rule 4.01 other than the managerial consideration of avoiding the occurrence of "revolving door" situations. In the Respondent's words, the change of the rules was motivated by a desire to avoid the inconsistency of an "employment policy to pay staff to leave under one type of appointment, only to rehire them on another type of appointment for extended periods of time". It might be true that the particular case of the Applicant did not involve this kind of abuse against which the amendment of rule 4.01 was directed. However, the validity of a rule or the amendment thereof did not require that its targeted objective should be realized in every particular case to which it applied.

Moreover, contrary to the Applicant's contention, the record showed that he had been properly notified and informed of the amended staff rule 4.01, paragraph 8.03. The new rule had been distributed to all staff members through a manual transmittal memorandum of 9 April 1994. Furthermore, the Applicant had been personally informed of the prospective application of the amended rule to his future employment by a letter dated 1 August 1994.

The Tribunal also noted that the amended rule had not been applied retroactively to the Applicant. When he was informed of the amendment on 9 April 1994, his 1990 consultancy appointment was still in force as extended and the

amended rule was not applied to the then operating extension. Rather, it was stated in the letter of 1 August 1994 that "at the time of your next contractual renewal after April 1994, the 120-day limit will apply". Retroactivity of a kind that was prohibited consisted in the application of a new rule to legal rights and situations operative, begun and consummated prior to the coming into force of the new rule. This was not the case of the Applicant's subjection to the amended rule 4.01.

The Applicant had also contended that he had a right to be grandfathered from the application of the amended rule introducing the 120-day limitation because the Bank had an "established practice" of grandfathering staff members when it introduced restrictions on their employment. He contended that when staff rule 5.09 was issued in 1988 imposing a limitation on the right to re-employment of those separated with a package, similar to the limitation imposed by amended rule 4.01, he had been grandfathered from the limitation because his employment had been terminated before the 1987 reorganization. The Applicant, however, did not substantiate his contention, which was totally denied by the Respondent.

Also in support of this contention, the Applicant referred to the fact that he had been grandfathered from the application of the four years' limitation imposed by staff rule 4.01, paragraph 6.01. The Tribunal did not find this episode to be conclusive evidence of an "established practice" complementing the Applicant's conditions of employment. The two situations were not comparable. The effect of the four years' limitation was much more severe than the one imposed by the 120-day limitation. Whereas the former limitation barred the Applicant totally from being re-employed, the latter only imposed a restriction on the duration of his employment.

The Tribunal concluded that by amending staff rule 4.01, paragraph 8.03, and applying the time limit introduced by the amendment to the Applicant's future employment, the Respondent had not failed to observe the conditions of employment of the Applicant.

5. DECISION NO. 174 (18 NOVEMBER 1997): DEBORAH GUYA V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

*Admissibility of application—Question of exceptional circumstances permitting admissibility—Issue of ignorance of the laws—No duty to advise staff member on the appeal process—Importance of observing time limits under Tribunal's statute*

The Applicant requested the rescission of the decision of the Appeals Committee of 10 October 1995, denying the relief she had requested following the termination of her 24 years' employment at the Bank's East Africa Regional Office in Nairobi. The Respondent had raised the question of the admissibility of the application on the ground of its untimeliness, and the Tribunal had granted the request to separate the jurisdictional issues from the merits. Accordingly, the present judgement dealt only with the question of jurisdiction.

The Tribunal noted that pursuant to article II, paragraph 2(ii), of its statute, no application before the Tribunal would be admissible "except under exceptional circumstances as decided by the Tribunal" unless it was filed within 90 days from "receipt of notice, after the applicant has exhausted all other remedies within the Bank Group, that the relief asked for or recommended will not be granted".

The Tribunal also noted that the Applicant's attorney had expressly recognized that the application he was filing on behalf of Ms. Guya was untimely but nevertheless requested that the Tribunal receive it because of exceptional circumstances which, in his view, excused the untimeliness.

In support of her claim, the Applicant stated that she lived "in a relatively remote country with difficult communications"; that she had no permanent residence in Nairobi and had to use a postal box for communication; that she had no access to the facilities of the Bank's office; that she found it difficult to be in touch with her attorney in Washington; that she "had no access to the statute of the Tribunal and had no way of even knowing that she must submit her Application within 90 days". Moreover, in his letter to the Tribunal, the Applicant's attorney stated that while he had actually been contacted on behalf of Ms. Guya in December 1995 he was "absent from Washington over the holidays for three weeks" and that "[c]ommunication with Ms. Guya was re-established in late January [1996]" only. Consequently, he noted, it was not until 12 February 1996 that he had sent her an application form, which had reached her in Nairobi in late March only. Ms. Guya, he indicated in the pleadings, had returned the completed form to him on 22 April by speedpost. He had received it on 29 April, and submitted the application on 10 May.

The Tribunal, however, held that it was unable to identify anything exceptional in the circumstances. The allegation that Ms. Guya had no access to the statute of the Tribunal and had no way of even knowing of the 90-day rule had no basis either in law or in fact. As the Tribunal had repeatedly ruled, unawareness of the rules could not be characterized as an exceptional circumstance (*Novak*, Decision No. 8 (1982), para. 17; *Mendaro*, Decision No. 26 (1985), para. 33), and "ignorance of the law is no excuse" (*Bredero*, Decision No. 129 (1993), para. 23). In the present case, the Applicant certainly knew of the Tribunal, its statute and its time limit requirements or, at least, was in a position to know of them. She had worked with the Bank's Nairobi office for 24 years. She had requested administrative review and appealed to the Appeals Committee within the prescribed time limits. As early as mid-December 1995, that is to say, in her own words, "within days of actually receiving the decision of the Vice-President for Personnel", she had contacted a retired staff member in Washington, who had previously been deputy head of the Nairobi mission, and "requested her assistance in making her Application to the Tribunal". And even assuming that Ms. Guya herself was not aware of the existence of the Tribunal and had no access to its statute, the attorney contacted on her behalf in December 1995, familiar as he should be with the Tribunal's procedures and jurisprudence, ought to have alerted her to the statutory time requirements and to the importance the Tribunal attached to them.

The Applicant also maintained that when the Respondent had decided on 5 October 1995 to accept the Appeals Committee's recommendation it did not give her the statute and rules of the Tribunal and did not advise her of her right to take her case to the Tribunal and of the 90-day statutory requirement.

The Tribunal noted that there was no rule of law requiring the Bank to advise the staff members at each and every stage of the judicial review and to recite to them the conditions and limits of such review as laid down in the relevant texts, the applicable general principles of law and the jurisprudence of the Tribunal. The fact that the Respondent had not advised the Applicant of her right to bring her case to the Tribunal and had not informed her of the time limit or other statu-



tory requirements could in no way be regarded as an exceptional circumstance under article II, paragraph 2(ii), of the statute of the Tribunal.

Neither did the Tribunal find anything exceptional in what the Applicant characterized as difficulties of communication. Fax and courier facilities were available in Nairobi. In addition, the Bank's Nairobi office had been instructed by headquarters as early as 19 July 1994 that "Ms. Guya is authorized to use the official pouch (without cost to her) to receive and send official documents to headquarters" relating to her termination, and that confidentiality should be guaranteed to her in that respect. The Applicant alleged in general words that she "was throughout barred from the Bank's offices in Nairobi", but she did not refer to any specific instance of her having tried to make use of that channel and having been denied access. The Bank's channel, moreover, was only an option, because, as the instructions from headquarters read, "Ms. Guya remains free to gain access to public mail, telephone and fax facilities outside the resident mission". The fact that on most occasions the Applicant and her attorney chose to use ordinary, rather slow, mail in preference to other, more speedy ways of communication available to them could not be regarded as an exceptional circumstance under article II of the statute.

Nor could the Tribunal characterize as exceptional circumstances under this provision the fact that the Applicant's attorney who, according to his letter to the Tribunal, had been contacted on behalf of the Applicant at an unspecified date in December 1995, had re-established contact with her in late January 1996 only because of his absence from Washington over the holidays and waited until 12 February to send her an application form, which presumably he must have done by ordinary mail since his letter reached her only in late March. The Tribunal was also unable to identify as an exceptional circumstance the fact that the Applicant, although having received the application form in late March, had returned the completed form on 22 April only.

The Tribunal deemed it necessary to emphasize once again the importance of the provisions of the statute governing time limits for the smooth functioning of both the Bank and the Tribunal. As it had ruled in a previous case, the Tribunal could not regard a delay due to the Applicant's "own casual treatment of the relevant legal requirements" (*Agerschou*, Decision No. 114 (1992), para. 45) as excused by exceptional circumstances under article II of the statute. The facts invoked suggested negligence and lax handling of the case. The Tribunal unanimously decided that the application was inadmissible.

6. DECISION NO. 181 (18 NOVEMBER 1997): CHANDRA HOEZOO V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

*Termination based on redundancy—Staff rule 7.01 regulating redundancy—Allegation of sexual harassment—Question of undue influence on redundancy decision*

The Applicant joined the Bank in 1977 at a level C position in the Northern Agricultural Division, Eastern Africa Projects Department. In the course of her career with the Bank, she was transferred to other divisions and was successively promoted to level D in 1979 and level E in 1983. This last position was equivalent to level 15, but as a result of the 1987 reorganization of the Bank she accepted a lesser-graded position at level 14. On 9 February 1990, the Applicant transferred to the Agriculture and Environment Division of Country Department VI (AF6AE). In 1993 and 1994, she undertook developmental assignments in other

departments of the Bank. While on her second developmental assignment, the Applicant's position in AF6AE became redundant on 31 March 1995. The Applicant was then placed on administrative leave and a contemporaneous job search was taken which proved unsuccessful. Notice of termination was given on 27 September 1995. The Applicant's special leave terminated on 8 September 1997. The administrative review requested by the Applicant confirmed the earlier decision taken by the Respondent and in her appeal before the Appeals Committee she did not succeed in obtaining reinstatement. The Applicant appealed to the Tribunal, contending that the decision to make her position redundant had been carried out in a capricious and arbitrary manner and was not in accordance with staff rule 7.01, paragraphs 8.02(d) and 8.03, which were the specific provisions invoked by the Bank.

The Tribunal noted that the competent departmental management team, composed of nine individuals, most of whom were in senior positions, had decided in 1995 on a number of budget reductions, in terms of both programmes and positions, in accordance with the policy established by the Bank at the time. Teamwork and technology skills were among the competencies identified as determining which staff members to retain in the Applicant's job classification and both performance and skills were among other factors taken into account in that connection. Three positions were ultimately abolished in the department, with one staff member having volunteered to leave and two others having been made redundant. The redundancies were decided on the basis of a business plan designed in the interests of efficient administration. Since the reductions affected several positions at levels 14 to 17, the Tribunal concluded that paragraph 8.02(d) of staff rule 7.01 was the appropriate provision to apply in the present case.

The Tribunal further noted that the proper application of that provision required that the performance and skills of staff members should be taken into consideration by the Respondent when determining how to reduce their number. While unsatisfactory performance "cannot alone furnish a basis for terminating service with the Bank on the ground of redundancy" (*Jassal*, Decision No. 100 (1991), para. 31; *Fabara-Nuñez*, Decision No. 101 (1991), para. 32), this did not mean that the performance or skills of a given staff member might not be taken into account when deciding, in the context of a redundancy procedure under staff rule 7.01, paragraphs 8.02(d) and 8.03, who should be retained. The Tribunal had held in that regard that "the extent of the Applicant's skills was indeed considered by the Respondent, not to justify the redundancy on these grounds but, on the contrary, to consider whether she could be kept in the new structure of the division" (*Denning*, Decision No. 168 (1997), para. 27). Indeed, if several positions were reduced in number under staff rule 7.01, paragraph 8.02(d), as was the case here, the Bank was required under paragraph 8.03 to take into account, among other elements, the performance of the staff members. In that respect, the guidelines governing redundancy in the Bank had been adequately followed.

The Tribunal noted that the Applicant's contention that the decision to make her position redundant had been carried out in a capricious and arbitrary manner was related to the argument that the decision had been based on an incomplete assessment of her performance. It considered that the Bank's assessment of a staff member's performance and qualifications was an important exercise of its managerial discretion, and the Tribunal would review such an assessment only for abuse of discretion (*Jassal*, Decision No. 100 (1991), para. 37). The record in the present case showed that criticism of the Applicant's performance had begun in the performance review for the period 1987/88, that is, before she had transferred

to AF6AE, and continued uninterrupted during the following evaluation periods. In most cases such criticisms had referred to tardy arrival, timeliness of work, performing below par, absence from workstation and other matters. In the review period of 1992/93, the Applicant's performance had been judged unsatisfactory, and a request had been made that she should be transferred from the division. Developmental assignments followed thereafter and, in spite of the Applicant's assertion to the contrary, it appeared that criticism was also made of her performance in other departments where these assignments were carried out. All such evaluations had been taken into consideration, and properly so, at the time of deciding on redundancies on a competitive basis. The Tribunal noted, however, that the Applicant was right in arguing that, except for the review period of 1992/93, she had never been given an unsatisfactory rating, a situation which might mislead the staff member into thinking that he or she would be insulated against future adverse personnel decisions.

The Applicant had also contended that the unsatisfactory performance review she received for the review period of 1992/93, her placement on developmental assignments for the two following years and her ultimate redundancy and termination all had originated in an incident and complaint of sexual harassment involving her supervisor at the time, "Mr. X". Upon review of documents provided by the parties, the Tribunal concluded that while a degree of informality seemed to characterize the working relationship between the Applicant and Mr. X, there was nothing in the record that supported the Applicant's allegation of sexual harassment.

The Tribunal recalled that the incident involving Mr. X was alleged to have taken place in 1990 and the Applicant had apparently informed the Project Adviser in the Department about the matter. It also appeared that, after receiving a critical performance evaluation from Mr. X for the 1990/91 review period, she had mentioned the matter in passing to her Division Chief at the time. But none of those complaints had been put in writing or otherwise documented. Although there was some dispute as to whether the Applicant's Division Chief had expressly accorded the Applicant the opportunity to pursue the matter formally, it was in any event the case that she had taken no action at the time. It was only after the redundancy notice that the Applicant had brought the alleged incident to the attention of the pertinent Personnel Officer. A formal complaint had been made to the Ethics Officer only at the time that the administrative review was requested, on 30 October 1995, or five years after the incident was alleged to have taken place. The investigation by the Ethics Officer, based on materials submitted and interviews with several staff members, concluded that there was insufficient evidence to proceed further. The Applicant referred to complaints of sexual harassment by other staff members against Mr. X and asserted that Mr. X had eventually been relieved from his managerial duties on those grounds. Neither of those events had been documented. No matter involving either the Applicant or Mr. X had been brought to the attention of the Department's Gender Committee.

Moreover, some other key events also contradicted the allegation that there might have been improper motive in the decision to make the Applicant's position redundant. The problems relating to the Applicant's performance had become apparent much earlier than the date of the alleged incident with Mr. X. Even for the review period of 1991/92, which followed the date of the alleged incident, the Division Chief had made positive comments about the Applicant in the annual performance review. A link between the criticism of her performance and the alleged incident could not therefore be established. Neither was there any evidence

that the developmental assignments were linked to such an incident or that the Applicant had been forced to accept such assignments. Rather, they had been arranged in consultation with the Applicant so as to provide new opportunities to enable her to overcome the performance problems affecting her in AF6AE.

The Tribunal was therefore satisfied that there had been no improper motive in the decision to make the Applicant's position redundant, nor was there any evidence that such a motive might have guided the performance review, developmental assignments or other relevant events.

The Applicant also argued that the decision to make her position redundant was retaliatory on the part of the former Division Chief, AF6AE, and Mr. X. Implicit in that argument was the question whether the redundancy decision had been unduly influenced by the former Division Chief. The Tribunal had dealt on a number of occasions with the question of influence by an unsympathetic manager on a redundancy process and had taken a critical view when improper influence had been found (*Klaus Berg* (No. 2), Decision No. 99 (1990), para. 38). In the present case, however, as in a recent precedent, "[t]he Tribunal finds that there is no evidence that the Respondent abused its discretion in applying the selection criteria prescribed by rule 7.01, paragraph 8.03, or that it was improperly influenced by supervisor X or the Director" (Teferra, Decision No. 169 (1997), para. 17). In fact, decisions about this and other redundancies were taken by the departmental management team, which as noted above was composed of nine individuals, and which did not include at the time either the former Division Chief, AF6AE, or Mr. X. The new Division Chief, AF6AE, was the one who had participated in the departmental management team, and there was no evidence of any improper influence on or by him.

The Tribunal dismissed the appeal.

7. DECISION NO. 182 (18 NOVEMBER 1997): "A" V. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

*Denial of disability pension benefits—Review of decision by the Tribunal—Timeliness of application—Eligibility standards for disability pension: totally incapacitated and likely to be permanent*

The Applicant appealed to the Tribunal the decision of the Pension Benefits Administration Committee denying the disability pension applied for by the Applicant under section 3.4(a) of the Staff Retirement Plan of the Bank, which provides:

"A participant . . . shall be retired on a disability pension if one or more physicians designated by the Administration Committee certify, and the Administration Committee finds, that the participant was then totally incapacitated, mentally or physically, for the performance of any duty with the Employer which he might reasonably be called upon to perform and that such incapacity is likely to be permanent."

On 31 May 1996, the Pension Benefits Administration Committee decided that the Applicant was not entitled to the disability pension and so notified the Applicant on 3 June 1996. The Applicant appealed to the Tribunal on 15 November 1996 pursuant to section 10.2(f) of the Staff Retirement Plan, which provides that the decision of the Pension Benefits Administration Committee:

"shall be conclusive and binding on all persons concerned, subject to the appeal of the decision to the World Bank Administrative Tribunal."

The power of the Tribunal under section 10.2(f) is very broad and allows for the examination of all elements of fact and law as well as of procedural fairness and transparency. As stated by the Tribunal in *Courtney* (No. 2), Decision No. 153 (1996), paragraph 30:

“The Tribunal may examine (i) the existence of the facts, (ii) whether the conditions required by the Staff Retirement Plan for granting the benefits requested were met or not, (iii) whether the Pension Benefits Administration Committee in taking the decision appealed has correctly interpreted the applicable law, and (iv) whether the requirements of due process have been observed.”

The Respondent raised first a jurisdictional objection that the appeal was untimely because it had been filed five months after the notification of the decision of the Pension Benefits Administration Committee and not within the 90-day period prescribed by article II of the statute of the Tribunal. In the Respondent's view, the application should have been filed at the latest by 3 September 1996, but it was filed on 15 November 1996 and hence was time-barred.

The Applicant contended that her failure to file her appeal with the Tribunal within the statutory time limit was caused by exceptional circumstances related to her illness and the long history of severe depression and psychological disorders dating back to age 11. The Respondent argued that the Applicant's illness did not constitute an exceptional circumstance for waiver of the 90-day rule. In particular, the Respondent contended that during the summer and fall of 1996, the Applicant was sufficiently well to participate in the presentation of her case to the Appeals Committee challenging her term on the ground of redundancy.

In order to determine the issue, the Tribunal reviewed the Applicant's medical records placed before the Pension Benefits Administration Committee. The Tribunal held that while it was true that the Applicant had participated in the proceeding before the Appeals Committee, her replies were mostly limited to “yes” or “no”. Therefore, it concluded that the Applicant's medical condition was such as to constitute an exceptional circumstance and was not time-barred.

Turning to the merits of the case, the Tribunal stated that the question of the Applicant's eligibility for a disability pension turned on the interpretation of section 3.4 (a) of the Staff Retirement Plan, which rested on whether her incapacity was (a) “total” “for the performance of any duty with the Employer which she might reasonably be called upon to perform”; and (b) “likely to be permanent”. In the present case, the Tribunal noted that the Pension Benefits Administration Committee had relied, among other things, on the view of the Medical Adviser who had concluded that while the Applicant was currently incapacitated from performing certain tasks, that incapacity was unlikely to be permanent.

Citing its decision in *Courtney* (No. 2), Decision No. 153 (1996), paragraph 30, the Tribunal concluded that the medical record evidenced that the Applicant could not perform any duty comparable to those of her former position with the Employer. Regarding the issue of whether the Applicant's incapacity was likely to be permanent, the Tribunal noted the reports of four medical specialists in psychiatry and other disciplines related to her illness (collectively “the medical reports”). The Tribunal also noted that the Pension Benefits Administration Committee had been advised by the Medical Adviser who had reviewed the reports. In that regard, the Tribunal, citing *Shenouda* (Decision No. 177 (1997), paras. 36-37), which had dealt with the need for a guarantee of procedural fairness and transparency in the proceedings and decision-making arrangements of the Pen-

sion Benefits Administration Committee, considered that the Medical Adviser had never examined the Applicant.

In the view of the Tribunal, the conclusions of the Pension Benefits Administration Committee could not be sustained in the light of the medical reports, particularly in the following respects:

(a) They failed to take sufficient account of the fact that the Applicant had suffered from severe depression since childhood. In 1992, Dr. X had concluded that the Applicant had a "severe psychiatric condition". The underlying cause of the Applicant's illness was a long-standing one and the medical reports did not show that the problem had been eradicated or improved by treatment;

(b) The conclusion that the Applicant was expected to be permanently incapacitated for any job that the Bank might reasonably ask of her seemed to be based on the Medical Adviser's statement that "her psychological state is improving. She is said to be coping better with her job-related resentment". However, that statement of improvement was made in relation to a person who was in "acute crisis". Indeed, according to the medical reports "at best she has not regained her baseline level of functioning prior to the 1988 incidents and at her worst remains depressed . . . volatile and withdrawn". It might be inferred from the above that her mental condition was so abysmal that the improvement was such as only to enable her to cope with daily living and was a far cry from any ability to do any work and more particularly work compatible with her training and experience.

In the light of such a long history of severe depression and psychological disorders, which seemed to have deteriorated with the years, the Tribunal considered that the Applicant might be regarded as totally incapacitated for the performance of any duty with the Bank which she might reasonably be called upon to perform and that such incapacity was "likely to be permanent". It must be noted that section 3.4(a) did not say that such incapacity must be permanent but only "likely" to be permanent. The test was confirmed by section 3.4(d) of the Staff Retirement Plan which empowered the Bank to terminate the disability pension on medical examination or other satisfactory evidence that the incapacity of a retired participant had wholly ceased or that he or she had regained the earning capacity which he or she had before the disability.

The Tribunal concluded that the Applicant was entitled to the disability benefit under the Staff Retirement Plan. The Applicant was also awarded \$5,000 in legal costs.

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## **D. Decisions of the Administrative Tribunal of the International Monetary Fund<sup>21</sup>**

1. JUDGEMENT NO. 1997-1 (22 AUGUST 1997): MS. "C" V. INTERNATIONAL MONETARY FUND<sup>22</sup>

*Non-conversion of fixed-term appointment into a regular appointment on the ground of unsatisfactory performance—Burden of proof—Question of reprisal for accusations of sexual harassment—Issue of transfer—Question of adequate warning of interpersonal difficulties—Opportunity to rebut complaints of criticism*

The Applicant was employed with the Fund on a two-year fixed-term appointment commencing 5 August 1992, as a Staff Assistant, grade A4, in the African Department, under a division chief who in early 1993 was succeeded by a new department chief, "Mr. A". The Applicant alleged that on two occasions he addressed remarks to her, once in spring 1993 and the second time on 6 December 1993, which she regarded as sexually harassing. The Applicant reported the 6 December 1993 incident three days later to the Deputy Director of the Division, who the Applicant asserted not only would secure for her an apology from Mr. A, but would also recommend a promotion for her if she would drop the issue of harassment. The Applicant further stated that the Administrative Officer of the Department took her to lunch in the Fund's Executive Dining Room and advised her not to pursue the matter further.

In the spring of 1993, as a result of reorganization in the African Department, a new division chief, "Mr. D", became the Applicant's immediate supervisor. The Applicant's first annual performance report (APR) covered the period from the initial date of her appointment until August 1993, which was signed by Mr. D. While there was no performance rating on the APR, it indicated that she was technically very competent, but that in pressure situations her normally good relationships with other members of the division were adversely affected. The Applicant's second APR covered the five-month period from August 1993 to the end of December 1993, in which she was awarded a performance rating of "2", a 2 per cent merit award and a promotion to grade A5. On 24 February 1994, at a meeting with the Director, the Deputy Director and the Administrative Officer regarding her performance, the Applicant was told she had deficiencies in the area of her interpersonal skills. At the close of the meeting she raised the matter of the unresolved complaint of harassment and was informed that the matter was closed.

In May 1994, upon learning that a conversion of her fixed-term appointment to a regular staff appointment was not being proposed, the Applicant, in the light of the favourable performance review, promotion and merit increase, complained that the non-conversion was in retaliation for her having raised the issue of sexual harassment. Under the circumstances it was decided that, in order to remove any basis for a perception that the decision not to convert her appointment had been influenced by her complaint about her former Director, she should be transferred to another department, the Staff Benefits Division of the Administration Department, where she accepted an appointment for an additional year, effective 29 August 1994.

The Applicant's third APR, which covered the period from 1 January 1994 to 31 December 1994, was prepared by her supervisor in the Administration Department, "Mr. B", and, as required, it included input from her former supervisor in the African Department regarding her performance in that department during the first eight months of the review year. The combined assessment was very favourable and made no mention of any difficulties with interpersonal skills.

In early March 1995, while the Applicant was on vacation, three immediate co-workers separately approached Mr. B with complaints about the Applicant's interpersonal behaviour within the division. The Applicant was confronted with the complaints upon her return to the office on 29 March 1995. When she requested to confront her accusers and respond to specific elements of their accusations, Mr. B declined on the ground that her colleagues had spoken in confidence. Furthermore, a personnel officer present at that meeting confronted the Applicant alone, relaying complaints about her interpersonal skills that had surfaced prior to

her transfer to the Administration Department, initially during a Fund training course, then in occasional confrontations or misunderstandings with several economists.

The record indicated that the Applicant was visibly surprised and upset by the accusations. She called in sick the next day, was subsequently placed on sick leave and never returned to work. On 10 May 1995, the Applicant was officially informed that, based on the information about her performance, her employment with IMF would expire in August, at the termination of the one-year extension of the original two-year appointment.

On 17 January 1997, the Applicant filed an appeal with the Tribunal, claiming, inter alia, that the Fund's decision not to convert her fixed-term appointment to a regular staff appointment on the ground of unsatisfactory performance was unlawful because it was in retaliation for complaints of sexual harassment that she had made against her supervisor in the African Department.

In consideration of the Applicant's complaints, the Tribunal took note that the Applicant, having held a fixed-term appointment, carried the burden of proof (*Safavi v. the Secretary-General of the United Nations*, UNAT Judgement No. 465, para. V (1989)). The Tribunal further considered that it was not necessary for it to decide for the purposes of the present case whether the alleged incidents qualified as sexual harassment or merely constituted inappropriate behaviour, but what was important to the case was that the Applicant could have reasonably believed that she was an object of sexual harassment and consequently could have made an accusation in good faith. The sustainability of an accusation of harassment made in good faith was not a precondition for a finding of reprisal in response to that accusation (*Belas-Gianou v. the Secretary-General of the United Nations*, UNAT Judgement No. 707 (1995), p. 45).

In examination of whether or not the Fund had acted in good faith in responding to the Applicant's complaint, the Tribunal had concluded that it had. In that regard, the Tribunal noted that the Applicant had pursued her complaint through appropriate channels up to the Director of Administration. The Director himself had investigated the complaint and concluded that it had not merited disciplinary action against Mr. A. The facts that the Administrative Officer of the African Department had taken the Applicant to lunch and advised her not to pursue the matter, and that the Applicant had subsequently been promoted and still later transferred to the Administration Department, did not, in the view of the Tribunal, demonstrate design by the Fund to "cover up" inaction on the Applicant's complaint of sexual harassment.

The Applicant alleged that her transfer to the Administration Department was not meant to give the Fund opportunity for objective appraisal but rather designed to put distance between a decision to terminate her and the eventual implementation of that decision. She had further alleged that there was an agreement that the decision on conversion would be made by the Administration Department on the basis of her performance in that department, "untainted" by prior problems that had arisen in the African Department.

The Tribunal noted that it was accepted that the administration of an international organization had the power to transfer staff members when and how it chose to even when the statutory law did not explicitly confer that power on it. Accordingly, in the opinion of the Tribunal, it would have been surprising if the Applicant's transfer were to have been subject to the condition that the decision on conversion exclusively turned on the Applicant's performance in the Adminis-



tration Department. Moreover, the Tribunal considered that it would not have been appropriate administrative procedure not to have mentioned the Applicant's prior performance difficulties to her new supervisors. Nor would it have been possible to transfer a person to another department without any explanation of the reasons for the transfer.

Regarding the issue of procedural or substantive irregularities surrounding the assessment of the Applicant's performance, the Tribunal noted that the promotion and salary increase at the end of the Applicant's second year of a fixed-term appointment were unusual under the Fund's policies (*Mr. D'Aoust v. International Monetary Fund*, IMFAT Judgement No. 1996-1). However, in the view of the Tribunal, this of itself should not have led the Applicant to expect conversion at the end of the third year, nor establish the Applicant's claim that the Deputy Director of the African Department had offered her a raise and a promotion in return for dropping the harassment matter.

The question was whether the situation represented a failure to warn the Applicant of perceived shortcomings in her performance that were relied on by the Fund in deciding not to convert her appointment. In that regard, the Tribunal noted that in the Fund's Guidelines for Conversion of a Fixed-term Appointment it was provided that supervisors shall take into account the candidate's ability "to work effectively with supervisors, peers and subordinates". It was clear that deficiency in interpersonal skills equally might lawfully be taken into consideration in preparation of the annual performance report (*Nualnapa Buranavichkit v. International Bank for Reconstruction and Development* (WBAT Judgement No. 7 (1982)); *Soad Hanna Matta v. International Bank for Reconstruction and Development* (WBAT Judgement No. 12 (1982))). Furthermore, the importance of performance evaluation systems in avoidance of arbitrariness and discrimination was emphasized in *Carl Gene Lindsey v. Asian Development Bank* (ADBAT Decision No. 1 (1992)). At the same time, the Tribunal also noted that adequate warning and notice were requirements of due process because they were necessary prerequisites to defence and rebuttal (*Safavi v. the Secretary-General of the United Nations* (UNAT Judgement No. 465, paras. VI-VIII (1989))).

While the Tribunal had concluded that the Applicant's allegation that her denial of conversion to a permanent post was in reprisal for her complaint of sexual harassment was unfounded, and that the Applicant had not met the burden of showing an abuse of discretion by the Fund in not giving her a permanent contract, it had found irregularities in the process of the Fund's decision. Two irregularities stood out: First, when the Applicant was accorded an extension of a year and transferred to the Administration Department, she should have been informed (a) precisely why she was not converted to permanent status at the end of two years; and (b) what steps should be taken by her to correct her perceived problems in interpersonal relations. Secondly, at the dispositive session of 29 March 1995 where Mr. B's earlier highly positive appraisal was preemptorily overturned, the Applicant was confronted neither by her critics nor by specific and rebuttable incidents of their criticism. That in particular was a lapse in due process.

The Tribunal considered that that session was not meant to be determinative and in fact had become so only because of the extremity of the Applicant's reaction to it and her failure to return to work. Nevertheless, the Tribunal found that the Fund should have taken steps to ensure that when transferred to the Administration Department, and in the course of her work there, she was made fully aware of her need to improve her interpersonal skills and the possibilities of so doing.

Moreover, and most fundamentally, when the Applicant's supervisor was given evidence by her co-workers of her interpersonal deficiencies, the Applicant should have been afforded a meaningful opportunity to rebut that evidence (*Carl Gene Lindsey v. Asian Development Bank* (ADBAT Decision No. 1, para. 9 (1992))).

In the view of the Tribunal, those failures by the Fund's Administration gave rise to a compensable claim of the Applicant, even though the decision not to offer the Applicant permanent employment stood. The Applicant was awarded compensation in the sum equivalent to six months' salary and reasonable costs of her legal representation.

2. JUDGEMENT NO. 1997-2 (23 DECEMBER 1997): Ms. "B" v. INTERNATIONAL MONETARY FUND<sup>23</sup>

*Complaint against non-promotion immediately upon assuming higher-level post but rather "underfilling" the post for a year before being promoted—Internal law of the Fund—Question of having the authority to change personnel policy—Issue of retroactivity—Question of limited circulation of notice of policy change—A vacancy announcement may refine the Job Standards*

The Applicant was employed with the Fund, effective 7 February 1983, and promoted in August 1994 to a position at grade A6. In August 1995, she applied for a position within her section at the grade A7/A8. A selection panel rated the Applicant, whose performance had earned an "outstanding" rating in her 1994 annual performance report, as "the best overall candidate among those interviewed in terms of relevant experience and skills necessary for the position" and unanimously selected her to fill the vacancy.

A difference of opinion soon arose as to the grade at which the Applicant's new appointment would be made, the Staff Development Division concluding that she had not satisfied the minimum time in grade or the education requirements for the position as described in the vacancy announcement. Ms. Z, a senior official of the Division, communicated the following views to the Applicant's department: since the Applicant's undergraduate and graduate degrees were in foreign languages, she did not fulfil the educational requirement of the posted vacancy, and since she had completed only one year of the three-year requirement for progressively responsible experience at grade A6, the Applicant should "underfill" the position for one year, in accordance with the "Kennedy-Swain Memorandum", permitting "underfilling" when either the selecting department or the Staff Development Division concluded that the candidate did not currently fully meet the stated requirements. Accordingly, the Applicant served at the A6 grade from 20 September 1995 to 1 November 1996, at which date she was promoted to grade A7. In her annual performance report for 1995, she was given an "outstanding" rating and granted a 5.9 per cent merit increase.

On 25 September 1996, the Applicant contested the "underfilling" of her position at grade A6. Specifically, she complained that the Kennedy-Swain Memorandum which formed the basis for the decision was without legal validity and that, therefore, the only governing rule was the basic policy laid down in staff bulletin 89/28, which prescribed rules concerning promotion within the same job ladder as well as into alternative ladders. The Applicant's promotion fell into the former category, and promotions in that category were subject to minimum time-in-grade requirements. For a promotion from grade A6 to grade A7, the time-in-grade requirement was three years in grade A6. A change in policy was

undertaken when it was discovered that the rule set out in staff bulletin 89/28 had led to inequities in promotions within the same ladder as compared with promotions across job ladders. This had led to Messrs Kennedy and Swain, the chiefs of the two divisions of the Administration Department with responsibility for policies concerning promotions, to issue their memorandum, liberalizing the time-in-grade restriction of staff bulletin 89/28 as well as providing for a "uniform approach" to the application of time-in-grade rules.

In consideration of the legality of the memorandum, the Tribunal noted article III of its statute, which provided that the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts, and, furthermore, as explained by the Commentary, that there were two unwritten sources of law within the internal law of the Fund: (a) the administrative practice of the organization; and (b) certain general principles of international administrative law, such as the right to be heard.

Moreover, in its judgement in re *D'Aoust (Mr. Michel D'Aoust v. International Monetary Fund*, Judgement No. 1996-1), the Tribunal had set forth the following essential conditions for a regulatory decision: it must be taken by an authorized organ of the Fund and laid down in a published official document of the Fund, with a determinable effective date, of which the staff had been given reasonable notice.

The Applicant had contended that the Kennedy-Swain Memorandum, on which the challenged decision had been based, was an invalid document because the Division Chiefs were without authority to make policy for the Fund on personnel matters. The Job Standards of the Chiefs of those Divisions did not provide them with that authority to change policy, and the approval by the former Director of Administration, Mr. Rea, could not have survived his departure from the Fund. However, the Tribunal found that the official functions of the Divisions and of their Chiefs conferred upon them sufficient authority to codify a pre-existing practice and issue the contested policy memorandum. A consideration, though not a determinative consideration, in so concluding was that the Kennedy-Swain Memorandum liberalized existing restraints on promotions, i.e., it removed an unintended and inequitable result of bulletin No. 89/28, namely, that staff promotions within the same job ladder were subject to time-in-grade requirements that did not apply in the same way when staff were promoted into a different job ladder. The Tribunal, citing *Organization of American States Administrative Tribunal Judgement No. 117 (Jose Luis Pando v. Director General of the Inter-American Institute for Cooperation on Agriculture (1992))*, which enunciated a principle regarding the form in which administrative actions might be clothed, concluded that the memorandum was a lawful form of the issuance of a personnel policy. It was a written statement of an adjustment in personnel policy, based on a pattern of practice, clearly related to its antecedents, which set forth the policy change to be made, and which had been circulated to senior personnel officers of every Fund department, to their administrative officers and to the Staff Association.

The Applicant also asserted that the memorandum had been retroactively applied to her and adversely affected her interests. She had applied for the personnel assistant position in question on 9 August 1995, while the Kennedy-Swain Memorandum was dated 7 September 1995. In the view of the Tribunal, in the absence of a specific provision setting the effective date of the memorandum, the date of the memorandum itself denoted the date on which it became effective.

That date, 7 September 1995, antedated the Fund's decision regarding the Applicant's promotion (20 September 1995). There was no legal justification for regarding the date on which she had applied for promotion as controlling.

Furthermore, the Applicant had impugned the memorandum for its limited circulation. In that regard, the Tribunal recalled *D'Aoust*, in which it had held that a particular practice fell short of meeting the essential criteria for a regulatory decision because it did not afford reasonable notice to the staff. In the present case, however, the Kennedy-Swain Memorandum did not constitute an unpublished practice known to and employed by a small number of officials of the Administrative Department of the Fund. It had been published, and circulated to all senior personnel managers, to all administrative officers and to the Staff Associations. Also citing *D'Aoust* and *Ricardo Schwarzenberg Fonck v. IDB (Case No. 2)* (1984), the Tribunal noted that where actions and omissions had not affected the complainant, irregularities were irrelevant. A fortiori, where the legal position of the complainant was affected, but in a positive way, lack of notice furnished no ground for complaint. In the present case, Ms. B had received her promotion before having completed the three years at grade A6 required under staff bulletin 89/28. On the basis of the applicable principles and precedents, and in view of the facts of this case, the Tribunal concluded that the limited measure of the circulation of the Kennedy-Swain Memorandum had not adversely affected the Applicant.

The Applicant had also argued that the vacancy announcement had violated the Fund's law. She had argued that the posted requirements were unlawful, and relied on the Job Standards for grade A7 to argue that she met the "desirable qualifications" of the Job Standards, and that the vacancy announcement had been illegally altered to require "the completion of a university degree programme". The Tribunal concluded that vacancy announcements might properly refine and particularize qualifications set out in the Job Standards and had legally done so in the present case. It was also noted that the underfilling policy, as articulated in the Kennedy-Swain Memorandum, had permitted the promotion of the Applicant to grade A7 without her even attaining a university degree in human resources management, just as it had permitted her promotion without her having met the three-year minimum time in grade at grade A6.

The Tribunal decided that requiring the Applicant to underfill, for approximately one year, a position to which she was promoted on 20 September 1995 had not contravened the internal law of the Fund and reflected a proper application of lawful rules concerning promotions and time-in-grade requirements.

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#### NOTES

<sup>1</sup>In view of the large number of judgements which were rendered in 1997 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 volume of the *Yearbook*. For the integral text of the complete series of judgements rendered by the four Tribunals, namely, Judgements Nos. 808 to 867 of the United Nations Administrative Tribunal, Judgements Nos. 1561 to 1672 of the Administrative Tribunal of the International Labour Organization, decisions Nos. 156 to 184 of the World Bank Administrative Tribunal and Judgements Nos. 1997-1 and 1997-2 of the Administrative Tribunal of the International

Monetary Fund, see, respectively: documents AT/DEC/AT/DEC/808 to AT/DEC/867; *Judgements of the Administrative Tribunal of the International Labour Organization: 82nd and 83rd Ordinary Sessions*; *World Bank Administrative Tribunal Reports, 1997*; and *Administrative Tribunal of the International Monetary Fund, Judgements Nos. 1997-1 and 1997-2*.

<sup>2</sup>Under article 2 of its statute, the United Nations Administrative Tribunal is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members.

The Tribunal shall be open: (a) to any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death; and (b) to any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied.

Article 14 of the statute states that the competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Such agreements have been concluded, pursuant to the above provisions, with two specialized agencies: International Civil Aviation Organization and International Maritime Organization. In addition, the Tribunal is competent to hear applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund.

<sup>3</sup>Samar Sen, Vice-President, presiding; and Mayer Gabay and Deborah Taylor Ashford, Members.

<sup>4</sup>Hubert Thierry, President; Mikuin Leliel Balandó, Vice-President; and Julio Barboza, Member.

<sup>5</sup>Samar Sen, Vice-President; and Mayer Gabay and Deborah Taylor Ashford, Members.

<sup>6</sup>Hubert Thierry, President; and Mayer Gabay and Deborah Taylor Ashford, Members.

<sup>7</sup>Samar Sen, Vice-President, presiding; and Mayer Gabay and Deborah Taylor Ashford, Members.

<sup>8</sup>Hubert Thierry, President; and Mayer Gabay and Julio Barboza, Members.

<sup>9</sup>Hubert Thierry, President; and Mayer Gabay and Deborah Taylor Ashford, Members.

<sup>10</sup>The Administrative Tribunal of the International Labour Organization is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the staff regulations of the International Labour Organization and of the other international organizations that have recognized the competence of the Tribunal, namely, as at 31 December 1997, 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 World Trade Organization, the International Atomic Energy Agency, the World Intellectual Property Organization, the European Organisation for the Safety of Air Navigation, the Universal Postal Union, the European Patent Organisation, the European Southern Observatory, the Intergovernmental Council of Copper-Exporting Countries, the European Free Trade Association, the Inter-Parliamentary Union, the European Molecular Biology Laboratory, the World Tourism Organization, the African Training and Research Centre in Administration for Development, the Intergovernmental Organisation for International Carriage by Rail, the International Center for the Registration of Serials, the International Office of Epizootics, the United Nations Industrial Development Organization, the International Criminal Police Organization (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, the Surveillance Authority of the European Free Trade Association and the International Service for National Agricultural Research. The Tribunal also

is competent to hear disputes with regard to the execution of certain contracts concluded by the International Labour Organization and disputes relating to the application of the regulations of the former Staff Pension Fund of the International Labour Organization.

The Tribunal is open to any official of the above-mentioned organizations, even if his 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.

<sup>11</sup>Sir William Douglas, President; Michel Gentot, Vice-President; and Edilbert Razafindralambo, Judge.

<sup>12</sup>Sir William Douglas, President; and Edilbert Razafindralambo and Jean-François Egli, Judges.

<sup>13</sup>Sir William Douglas, President; Michel Gentot, Vice-President; and Jean-François Egli, Judge.

<sup>14</sup>Sir William Douglas, President; Michel Gentot, Vice-President; and Edilbert Razafindralambo, Judge.

<sup>15</sup>Michel Gentot, Vice-President; and Edilbert Razafindralambo and Jean-François Egli, Judges.

<sup>16</sup>Sir William Douglas, President; Michel Gentot, Vice-President; and Mella Carroll, Judge.

<sup>17</sup>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.

<sup>18</sup>Elihu Lauterpacht, President; Robert A. Gorman and Francisco Orrego Vicuña, Vice-Presidents; and Prosper Weil, A. Kamal Abul-Magd, Thio Su Mien and Bola A. Ajibola, Judges.

<sup>19</sup>Robert A. Gorman, a Vice President of the Tribunal as President; and Prosper Weil and Thio Su Mien, Judges.

<sup>20</sup>Elihu Lauterpacht, President; Robert A. Gorman and Francisco Arrego Vicuña, Vice-Presidents; and Prosper Weil, A. Kamal Abul-Magd, Thio Su Mien and Bola A. Ajibola, Judges.

<sup>21</sup>The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is empowered to review any employment-related decision taken by the Fund on or after 15 October 1992.

<sup>22</sup>Stephen M. Schwebel, President, and Nisuke Ando and Michel Gentot, Associate Judges.

<sup>23</sup>Stephen M. Schwebel, President; and Georges Abi-Saab and Nisuke Ando, 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)

#### COMMERCIAL ISSUES

##### 1. USE OF THE UNITED NATIONS NAME AND EMBLEM

*Memorandum to the Acting Deputy United Nations  
High Commissioner for Human Rights*

##### 1. Introduction

1. The purpose of the present paper first is to examine the Organization's rules and policy in respect of the use of the United Nations name and emblem by outside entities as well as the rules and policy concerning acceptance and publicizing of private donations. That examination is offered in section 2 of this note, which sets out the rules concerning the use of the United Nations name and emblem by outside entities. The rules and policy concerning the use of the United Nations name and emblem derive from a General Assembly resolution. Section 3 of the note addresses the most recent and relevant practice of the Organization raising these issues: the fiftieth anniversary commemoration, including the activities of the Foundation for the 50th Anniversary of the United Nations. Section 4 briefly addresses the practice of UNICEF in these areas. Section 5 contains the conclusions resulting from the analysis of the rules, policy and practices of the Organization.

##### 2. General overview of the rules and policy

##### 2.1 Use of the United Nations name and emblem by outside entities

2. The legislative basis for the use of the United Nations name and emblem derives from General Assembly resolution 92 (I) of 7 December 1946, entitled "Official Seal and Emblem of the United Nations". That resolution reserves the use of the United Nations name and emblem for official purposes of the Organization, and prohibits its use by outside entities without the authorization of the Secretary-General. The relevant part of the resolution reads as follows:

*"The General Assembly,*

...

"2. *Considers* that it is necessary to protect the name of the Organization and its distinctive emblem and official seal;

*"Recommends therefore:*

(a) That Members of the United Nations should take such legislative or other appropriate measures as are necessary to prevent the use, without authorization by the Secretary-General of the United Nations, and in particular for commercial purposes by means of trademarks or commercial labels, of the emblem, the official seal and the name of the United Nations, and of that name through the use of initial letters;

(b) That the prohibition should take effect as soon as practicable".

3. The Organization's policy is that the use of the United Nations name and emblem, as well as any abbreviations thereof, is reserved for official purposes of the Organization; commercial use, as such,<sup>1</sup> is prohibited; and any use of the United Nations name for other, non-commercial purposes requires the explicit authorization of the Secretary-General. In this respect, it is important to note that while the terms of the resolution could be construed to simply express a particular concern regarding the use of the name or emblem for commercial purposes, the Office of Legal Affairs, consistent with such an interpretation, has often referred to the established policy of the Organization not to grant permission for such use or, on a number of occasions, has indicated that such use is prohibited.

4. It is important to note also that the United Nations name and emblem are protected worldwide free of charge under article 6ter of the Paris Convention for the Protection of Industrial Property, on the assumption that they are not used for commercial purposes. Accordingly, the long-standing policy of the Organization is not to authorize the commercial use of its name or emblem.

5. Article 6ter protects the names and emblems of "international intergovernmental organizations" in a privileged manner, i.e., worldwide and very inexpensive, provided that those names and emblems have been registered with the World Intellectual Property Organization and have been communicated to its member States. The Paris Convention allows any international intergovernmental organization to take action in countries party to it to prevent the unauthorized use of both its name and its emblem. Notably, in 1979, the Governing Body of WIPO decided that organs or bodies of "international intergovernmental organizations" that used their names and emblems in commercial activities lost the privileged protection provided by article 6ter. In that case, protection under the Paris Convention would have to be sought, and an appropriate fee be paid, in each country, for each individual product on which the name and emblem registered would be used, as in the case of any other commercial entity.

6. If the Organization changed its policy concerning the commercial use of the United Nations name and emblem, it would clearly run the risk of eventually losing the privileged, inexpensive protection provided under the Paris Convention, requiring it to obtain protection on a country-by-country basis. Moreover, granting authorizations for clearly commercial uses of the United Nations name or emblem might expose the Secretary-General to a multitude of demands for such use of the emblem by private entities. Granting such authority might also expose the Secretary-General to possible Member State criticism in view of the particular concern regarding commercial use reflected in General Assembly resolution 92 (I).



7. The Organization's policy on the use of the United Nations name and emblem is reflected in the internal Guidelines, developed in 1972, for considering cases involving the use of the United Nations emblem. According to those Guidelines, continuing use of the United Nations name, through its inclusion in the title of an entity, may be authorized for United Nations Associations with national and local coverage and for non-commercial organizations, provided that such inclusion is genuinely descriptive of the organization, will not imply official connection with the United Nations and will serve to foster support for or interest in the United Nations or in certain of its programmes.

8. If an outside entity is authorized to include the United Nations name in its title, it may also be authorized to use the United Nations emblem on stationery and publications in addition to its own logo.<sup>2</sup> However, the Organization routinely requires that the emblem be modified by adding the words "United Nations" or "UN" above and the words "We believe" or "Our hope for mankind" below the emblem. The appearance of those words together with the emblem makes it clear that no official use of the United Nations emblem is involved and that it is being reproduced as a demonstration of support for the United Nations. The emblem should appear separately, and some distance away from the insignia of the outside body. Notably, the policy and practice generally have been to limit this authorization to not-for-profit entities.

9. When outside entities are authorized to continuously use the United Nations emblem on their stationery and other materials, it is realized that, being not-for-profit entities, they have to carry out fund-raising to sustain themselves and that, accordingly, fund-raising materials (e.g., leaflets requesting donations) would be printed on their stationery depicting, inter alia, the United Nations emblem. This is viewed as acceptable provided that the funds to be raised are used for the main purposes of the entity.<sup>3</sup>

10. In conclusion, it should be noted that, on the basis of General Assembly resolution 92 (I), the Secretary-General has developed a policy concerning the granting to outside entities of the right to use the United Nations emblem and name.

## *2.2 Use of name and emblem for fund-raising*

11. As regards the recognition by the United Nations of private donors, the United Nations has not promulgated a specific regulation, rule or procedure to regulate the manner in which private donors may be acknowledged.<sup>4</sup> A determination of the appropriateness of a proposed form of acknowledgement is undertaken on a case-by-case basis and must take into account the policy concerning the use of the United Nations name and emblem and the rules governing such use by outside entities.

12. Based on the established strict policy prohibiting the commercial use of the United Nations name and emblem, the Organization has prohibited individuals or entities doing business with the Organization from publicizing contracts with the Organization.<sup>5</sup> Of course, the Organization could establish a similar policy in regard to private donations, although it has not yet done so.

13. In principle, having regard to the fact that the acceptance of a private donation is conditional on the donation being "consistent with the policies, aims and activities of the Organization" (financial regulation 7.2), publicizing a donation to the United Nations may be acceptable if such action itself is "consistent with the policies, aims and activities of the Organization". This would be the case

if such publicizing is not aimed at promoting products or services offered by a donor (in case the donor is a commercial entity), or at otherwise soliciting its business opportunities, but rather at support for the United Nations and its activities.

14. Specific forms and ways of publicizing a donation consistent with the policies, aims and activities of the Organization may differ depending on specific circumstances on each particular occasion. Prior concurrence of the Organization provides an opportunity to monitor such activities to protect the interests of the Organization.

15. As regards the extent to which the United Nations name or emblem could be authorized for use in publicizing activities, an analysis of the policy and practice of the Organization reflects the discretion that the Secretary-General has in this regard. What constitutes commercial use or, alternatively, what may be deemed to be consistent with the policies, aims and activities of the Organization is, in many instances, judgemental. It may be argued that all activities of a commercial firm are commercial in nature. On the other hand, it may also be argued that the use of the United Nations name or the emblem under certain terms and conditions does not constitute a commercial use as such, but is aimed at support for the United Nations and its activities. Notably, commercial entities making donations or sponsoring United Nations projects on occasion have been authorized by the Organization to use the United Nations name and emblem.

16. A difficult issue in this context is the possible use of the United Nations emblem by such an entity for fund-raising purposes. Although the 1972 Guidelines in principle view the use of the United Nations emblem for such purposes as acceptable, on numerous occasions the Office of Legal Affairs has advised against United Nations involvement in third-party fund-raising arguing that, except in very narrowly circumscribed circumstances where the General Assembly has authorized the funding of United Nations projects through private organizations and individual sources, the United Nations does not engage in private fund-raising activities. This is so because such activities often involve direct dealings with commercial firms and the use of the United Nations name and emblem which, as indicated above, may not be used for commercial purposes. In addition, there exists the risk of jeopardizing the Organization's privileges and immunities.

17. The underlying concern is that, should problems arise during the course of fund-raising activities (for example, the improper solicitation or management of funds, third-party claims or difficulties with the taxation authorities of the State in which the company conducting fund-raising is incorporated), the Organization would be exposed to the risk of litigation, including challenges to its privileges and immunities. Accordingly, this Office has expressed concern in regard to proposals that the Organization become involved with third-party fund-raising activities where the operational decisions on seeking and disbursing funds would be taken by individuals not accountable to the Secretary-General but using the Organization's name and reputation to raise money. Notably, fund-raising activities by individuals or entities involving the use of the United Nations name or emblem, where they occur, normally occur in close consultation with the Organization, often under the terms of formal agreements with the Organization.

### *2.3 Role of the the United Nations in the development of promotional material for private entities*

18. The parameters of the use of materials by private entities to promote their relationship with the United Nations, and the role of the United Nations in

the development of such materials, must be considered in the light of the United Nations policy concerning whether—and if so, the extent to which—the United Nations name and emblem can be used in such promotional materials. In assisting private entities in developing appropriate promotional materials in support of the United Nations and its activities, the following criteria should be kept in mind:<sup>6</sup>

- The promotional material must clearly indicate that the entity's collaboration with the United Nations is non-exclusive and does not constitute an endorsement by the United Nations of the entity's business or services;
- The dignity of the name and emblem (and programme trademark as appropriate) of the United Nations is protected;
- The promotional material must provide information and visibility on the United Nations, its work and the particular programme;
- The names and logos of the private entities must be appropriately reproduced in terms of size and colour and sufficiently separated so as not to be confusing to the viewer/reader.

19. Past practice may be instructive as to the parameters for United Nations involvement in the development of promotional materials, including the use of the emblem. However, in this respect, it must be understood that each situation must be examined in the light of the particular circumstances.

### 3. *Fiftieth anniversary commemoration*

#### 3.1 *UN50 Trust Fund*

20. UN50 global activities were focused on communications and education about the work and the goals of the United Nations and sought to create new support for the work of the Organization. To that end, the Secretary-General established a UN50 Trust Fund to receive voluntary contributions from Member States and from the private sector, including from a limited number of global sponsors and international licensees (see report of the UN50 Preparatory Committee (A/48/48, 17 September 1993)). The General Assembly took note of this financing method in its adoption of the resolution proposed by the Preparatory Committee.

#### 3.2 *The UN50 emblem and the guidelines for its use*

21. With the approval of the General Assembly, the UN50 emblem was designed as a separate and distinct emblem. Its use in the commemoration of the anniversary was regulated by guidelines which had been prepared by the 50th anniversary secretariat within the general parameters of General Assembly resolution 92 (I) of 7 December 1946. The guidelines provided, inter alia, that the emblem was to be used only until the end of the anniversary, i.e., until 31 December 1995, and solely to publicize events to benefit the United Nations or endorse one of its programmes. The guidelines also emphasized that the UN50 emblem should not be used in connection with any commercial activity. All uses of the UN50 emblem were subject to clearance from the UN50 secretariat and on the basis of terms and conditions set forth in detailed licensing contracts/agreements concluded with authorized users and actively monitored by the 50th anniversary secretariat.

### 3.3 *The UN50 Foundation*

22. In order to ensure tax deductibility for contributions and donations from the private sector in the United States, a foundation with tax-exempt status under United States law was established with the approval of the Organization to accept United States tax-deductible donations for UN50 programmes otherwise not available to the United Nations itself: the UN50 Foundation. The UN50 Foundation was constituted under New York State law and a Relationship Agreement was concluded between it and the United Nations. Pursuant to the Relationship Agreement, the Foundation would not initiate any fund-raising without the prior consent of the United Nations. The Foundation's use of the UN50 emblem was limited to the Foundation's support of the United Nations, its goals and objectives, or the UN50 commemoration; it was further provided that the emblem could not, in any event, be used in any way that conveyed or suggested any direct or indirect United Nations endorsement or support of any products or services. The use of the UN50 emblem could only be used in conjunction with the words: "A project in honour of the United Nations fiftieth anniversary" or similar language.

### 3.4 *UN50 fund-raising: global sponsors and licensees*

23. On an exceptional basis, limited fund-raising by the United Nations in the name of its 50th anniversary, and using the UN50 emblem, has been authorized by the Secretary-General to secure funds and other resources from a limited number of global sponsors and licensees, whereby the United Nations would grant permission for limited supportive use of the UN50 emblem for non-commercial use in return for substantial donations. The resources raised in this manner were to be used solely to fund UN50 projects, primarily educational and communications activities.

24. Any global sponsor use of the UN50 logo would be granted and controlled by a contract, which would require that the use of the emblem must be non-commercial, tied to expressions of support by the global sponsor for the UN50 commemoration. Prior to signing, each global sponsor contract was submitted to the Committee on Contracts for review. Attached is a description of global sponsorships and licensing agreements entered into under this authority.

## 4. *UNICEF practice*

### 4.1 *UNICEF*

25. The International Children's Emergency Fund was established by the General Assembly in its resolution 57 (I) of 11 December 1946 at the request of the Economic and Social Council at its third session, in accordance with Article 55 of the Charter of the United Nations. The Fund was established as a subsidiary body of the General Assembly in accordance with Article 22 of the Charter. General Assembly resolution 802 (VIII) of 6 October 1953 changed the name of the Fund to "United Nations Children's Fund", although the acronym UNICEF was retained.

26. Although the UNICEF name and emblem are not explicitly mentioned in General Assembly resolution 92 (I), it has been the consistent policy of the Office of Legal Affairs to interpret it as applicable to the use of the UNICEF name and emblem, since UNICEF is a subsidiary body of the United Nations and its name and emblem contain the United Nations acronym. Thus, in addition to the

protection of the General Assembly resolution and the national measures that individual Member States may take, the UNICEF name and emblem (with the Organization itself) are protected under article 6ter of the Paris Convention.

#### 4.2 *Use of the UNICEF name and emblem for fund-raising*

27. The use of the UNICEF name and emblem is therefore limited to the official purposes of UNICEF, and its commercial use is prohibited.<sup>7</sup> Accordingly, for example, contractors providing services for UNICEF are prevented from using the UNICEF name and emblem for their own benefit.<sup>8</sup> However, UNICEF was authorized by General Assembly resolution 57 (I) to receive funds, contributions and other assistance not only from Governments but also from "voluntary agencies, individuals and other sources".<sup>9</sup>

28. The above-mentioned authorization has been consistently interpreted, and applied, as permitting UNICEF to undertake fund-raising activities, which normally include the use of the UNICEF name and emblem. As we understand it, the use of the UNICEF name and emblem for fund-raising purposes is currently limited to: (a) the cards and other products created by the UNICEF Greeting Card Operation; (b) the National Committees for UNICEF; and (c) partnerships with commercial corporations.

(a) *Greeting Card Operation (GCO)*. The history of the GCO dates back to 1949, when UNICEF first sold greeting cards as a modest fund-raiser (the first card was designed on the basis of a watercolour card sent by a Czechoslovakian girl in thanks for the help UNICEF provided to her destroyed village after the Second World War). In 1951, the UNICEF Executive Board established a UNICEF Greeting Card project, first as a Fund, later as a Division and then as the current Greeting Card Operation. In 1959, National Committees for UNICEF assumed the responsibility of distributing and selling within their territory UNICEF greeting cards and other products (e.g., pins, teddy bears, T-shirts, pens, calendars). The use of the UNICEF name and emblem in greeting cards and any other GCO product is not considered to be commercial, as only UNICEF's programmes benefit from their sale.<sup>10</sup>

(b) *National Committees for UNICEF*. Such committees are independent of and separate from UNICEF. The legal status of National Committees falls within the internal competence of the State of their respective nationality. National Committees undertake advocacy activities and organize fund-raising activities for UNICEF, including the sale of UNICEF greeting cards and other products. They relieve UNICEF of the burden of selling and distributing GCO products and allow donors to obtain tax-exempt benefits for their donations to UNICEF.<sup>11</sup> The relationship between UNICEF and National Committees is governed by Recognition Agreements. The current standard Recognition Agreement was presented to the UNICEF Executive Board in 1995. Article 2 authorizes National Committees to use the UNICEF name and emblem as part of their own emblem<sup>12</sup> "for the sole purpose of accomplishing the objectives" of the Recognition Agreement. Subcommittees or regional committees established by National Committees are also allowed to do so with the same restrictions. Although the main fund-raising activity of the Committees is related to the sale of GCO products, they undertake a great variety of other fund-raising activities, such as concerts, dinners, plays and movies, and the sponsorship of their credit cards.

(c) *Partnerships with commercial corporations*. Such partnerships may be undertaken directly by UNICEF or through National Committees. No official

guidelines have been issued on the criteria for concluding these partnerships. However, it appears to be a widely acceptable principle that they should not imply an endorsement of the products of the commercial corporation with which the partnership is concluded, although the political implications for UNICEF as a result of the association with the corporation are still evaluated (e.g., landmine manufacturers, corporations engaging child labour). Each situation is therefore assessed on an ad hoc basis.

29. Thus, on a number of occasions, the Organization has authorized the use of the UNICEF emblem and name for fund-raising purposes by commercial entities. The attached provides examples.

30. In addition to the above, the UNICEF name and emblem are used in materials and supplies provided by UNICEF for its programmes of cooperation. Even though ownership of the foregoing is immediately transferred to the Government upon arrival in the country, UNICEF places thereon its name and emblem to indicate that they are provided by UNICEF.<sup>13</sup>

#### 4.3 *Acceptance by UNICEF of private donations*

31. Acceptance of private donations is subject to their consistency with the policies and objectives of UNICEF and their compliance with the UNICEF Financial Regulations and Rules. Acceptance also involves an assessment of the political implications for UNICEF which may result from the association with the organization or individual (e.g., landmine manufacturers, corporations engaging child labour).

32. Recognition of private donations received by UNICEF is done on an ad hoc basis, depending on the level of the contribution and the nature of the donor. Such recognition may vary from a simple letter of appreciation from the programme manager or the Executive Director to a press release, a picture, a gift or a public announcement on TV and radio. It seems, however, that there are no established rules or consistent practice on how recognition by UNICEF is expressed. It is normally left to the good judgement of the appropriate UNICEF official. Nevertheless, it appears to be an accepted principle that such recognition should not imply an endorsement of the activities of the donor.

33. No rule or official policy exists concerning the use that donors may make of such recognition. However, the generally accepted principle seems to be that donors should not make use of such recognition in a manner that would imply any endorsement of the donor's products.

34. As for the National Committees for UNICEF, their practice is also unregulated. They follow local customs regarding the recognition of philanthropic donations.

#### 5. *Conclusion*

35. The use of the name and emblem of the Organization is governed by General Assembly resolution 92 (I) and the policy and practice of the Organization in applying the terms of that resolution. On occasion, the Office of Legal Affairs has previously indicated that the resolution prohibits the use of the name and emblem for commercial purposes. However, we believe a sounder reading of the provision is that it does not prohibit such use, but expresses a particular concern in the matter. In that respect, we believe that the issue is principally one of policy, as indeed the Office of Legal Affairs has also suggested.

36. As the practice indicates, it is the long-standing policy of the Organization to prohibit the use of the name and emblem for commercial purposes. This policy is based on the need to maintain the protection provided to name and emblem under international law as long as they are not used for commercial purposes. This policy also protects the Organization from financial risks that are associated with the commercial use of the name and emblem and, more generally, the risks to the financial or other interests of the Organization that may result from the use of the name and emblem in a manner or by individuals or entities that may not be consistent with the aims, policies and activities of the Organization. For these reasons, we recommend that the Organization maintain a strict policy prohibiting the commercial use of the name and emblem. Of course, as the practice of the Organization reflects, this policy allows for the use of the name and emblem in a wide variety of circumstances, including their use by commercial entities where the principal aim is to support the United Nations and where measures are taken to avoid the suggestion that the United Nations is endorsing the products or services of such entities.

26 November 1997

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## LIABILITY ISSUES

2. CLAIMS FOR COMPENSATION FOR INJURY, ILLNESS OR DEATH BY MILITARY OBSERVERS OR CIVILIAN POLICE OBSERVERS IN PEACEKEEPING OPERATIONS: DETERMINATION WHETHER THE INJURY, ILLNESS OR DEATH SUSTAINED BY OBSERVERS IS "ATTRIBUTABLE TO THE PERFORMANCE OF OFFICIAL DUTIES ON BEHALF OF THE UNITED NATIONS"

### *Memorandum to the Chairperson, Advisory Board on Compensation Claims*

1. This is in response to your 1 November 1996 and 24 June 1997 memoranda seeking our advice on how to determine whether the injury, illness or death sustained by a military observer or a civilian police observer (the "observer/s") was attributable to the performance of official duties on behalf of the United Nations, for purposes of compensation.

2. In your memorandum, you have explained that, while the facts of most cases presented to the Advisory Board on Compensation Claims are straightforward enough to permit a determination as to whether injury, illness or death of observers was attributable to the performance of official duties on behalf of the Organization, the Advisory Board has recently been confronted with several "borderline" cases in which it is difficult to make such a determination. You have mentioned, in this regard, that compensation claims have been submitted to the United Nations from, e.g., an observer who drowned while swimming on an official break; an observer who sustained an eye injury while playing squash in a club mini-competition; an observer who sustained dental injuries while playing soccer; and an observer who was killed in an ambush while escorting a friend home after a social outing. Having regard to such "borderline" cases, you seek our advice on: (a) how broad an interpretation should be given to the relevant provisions in the Notes for Guidance of Observers; (b) whether such observers should be considered to be on official duty at all times while they are

in the mission area; and (c) what specific questions the Advisory Board should be raising when it considers these types of claims, particularly in view of the United Nations Administrative Tribunal judgement in the *Davidson* case (Judgement No. 587) in relation to "special hazards". Our views on the issues you raise are set out below.

#### A. *Notes for the Guidance of Military/Police Observers on Assignment*

3. As stated in your memorandum, the issue of compensation for injury, illness or death of observers is dealt with in the mission-specific Notes for the Guidance of Military/Police Observers on Assignment (hereafter "the Notes"). Pursuant to the Notes, the United Nations provides compensation for the injury, death or illness determined by the Secretary-General to be "attributable to the performance of official duties on behalf of the United Nations".<sup>14</sup> The Notes also provide that no compensation shall be awarded when the injury, illness or death has been occasioned by the wilful misconduct of the observer, or the wilful intent of the observer to bring about the injury, illness or death on himself or another.

4. The Notes further provide that an injury, illness or death sustained by an observer "will be deemed to be attributable to the performance of official duties on behalf of the United Nations" *in the absence of any wilful misconduct or wilful intent* when:

"(a) The death, injury or illness was the result of a natural incident when performing official duties in the course of a United Nations assignment;

"(b) The death, injury or illness was a direct result of the presence of the observer or monitor in accordance with a United Nations assignment in an area involving special hazards to the observer's or monitor's health or security, and occurred as a result of such hazards; or

"(c) The death, injury or illness occurred as a direct result of traveling by means of transportation provided by, or at the expense of, the United Nations in connection with the performance of official duties only. This provision shall not extend to motor-vehicle transportation provided by the observer/monitor or sanctioned or authorized by the United Nations solely at the request and for the convenience of the observer or monitor."<sup>15</sup>

Accordingly, death, injury or illness will be deemed to be "attributable to the performance of official duties on behalf of the United Nations", and therefore compensable (in the absence of wilful misconduct or wilful intent) in any one of these three circumstances.

#### B. *Examination of criteria*

5. The following paragraphs examine the criteria set forth in the Notes (and reproduced in paragraph 4 above) for determining whether an injury, illness or death sustained by an observer "will be deemed to be attributable to the performance of official duties on behalf of the United Nations".

##### *Criterion A*

6. The criterion quoted under (a) in paragraph 4 above (hereafter "criterion A") provides that an injury, illness or death sustained by an observer "will be deemed to be attributable to the performance of official duties on behalf of the United Nations" in the absence of any wilful misconduct or wilful intent when "the death, injury or illness was the result of a natural incident when performing official duties in the course of a United Nations assignment".



7. That criterion requires a causal connection between the injury sustained by the observer and his performance of official duties. In other words, the specific facts and circumstances of a particular case must establish a causal connection between the injury and the functions of the observer. To find such a connection, relevant questions could include whether the cause of the injury (a) occurred during a time when the observer was discharging his functions, (b) occurred while the observer was at the location where he was expected to be when discharging his functions, and (c) arose from an activity related or incidental to the performance of his functions.

8. Concerning the requirement of a causal nexus between the injury and the employment for purposes of compensation, we refer by analogy to national workers' compensation statutes. A common form of expression used to depict this requirement is that the injury be one "arising out of and in the course of the employment". The terms "arising out of" and "in the course of the employment" in this context are not synonymous. The words "arising out of" refer to the origin of the cause of the injury. For example, an accident "arises out of" employment when it occurs while the employee is engaged in some activity or duty which he is authorized to undertake and which is calculated to further, directly or indirectly, the employer's business. The term "in the course of" employment, as used in workers' compensation statutes, refers to the time, place and circumstances under which the accident or injury occurred. For example, an injury occurs "in the course of" the employment when it takes place within the period of the employment, at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto.

#### *Criterion B*

9. The criterion quoted under (b) in paragraph 4 above (hereafter "criterion B") provides that an injury, illness or death sustained by an observer will be compensable in the absence of any wilful misconduct or wilful intent when "the death, injury or illness was a direct result of the presence of the observer or monitor in accordance with a United Nations assignment in an area involving special hazards to the observer's or monitor's health or security, and occurred as a result of such hazards".

10. In accordance with criterion B, when the death, injury or illness was the direct result of the presence of an observer in an area involving special hazards and occurred *as a result of* such hazards, then the presence of the observer in that area is sufficient for purposes of compensation. A causal connection must, therefore, exist between the "special hazards" that exist in the mission area and the death, injury or illness that resulted from those special hazards. However, in accordance with the Notes, as well as the Tribunal's ruling in the *Davidson* case (see paras. 15-18 below), the determination of whether such "special hazards" exist in a particular mission and whether the death, injury or illness resulted from those special hazards should be viewed rather liberally. Pursuant to that case, where special hazards exist which could have contributed to the observer's death, injury or illness, the burden should be on the Administration to prove that the death, injury or illness did not result from such special hazards. Absent such proof, compensation should be payable.

#### *Criterion C*

11. The criterion quoted under (c) (hereafter "criterion C") provides that an injury, illness or death sustained by an observer will be compensable in the absence of any wilful misconduct or wilful intent when "the death, injury or illness occurred as a direct result of travelling by means of transportation provided by, or

at the expense of, the United Nations in connection with the performance of official duties only". Criterion C further excludes from its ambit injury, illness or death sustained by observers during transport (a) on vehicles provided by the observers themselves or (b) sanctioned or authorized by the United Nations solely at the request and for the convenience of the observers.

C. *How broadly should the Notes be interpreted?*

12. With respect to your question as to how broadly the Notes should be interpreted, the Notes provide that:

"[D]oubtful cases will be given sympathetic consideration, taking into account all relevant factors, including the possibility that such injury, illness or death could have occurred during the performance of official duties".<sup>16</sup>

13. While each claim must be examined against the criteria set forth in paragraphs 3 and 4 above, the above-quoted provision requires an examination of an observer's claim which gives the claimant the benefit of the doubt; in other words, unless a claim is clearly outside the criteria in the Notes (set forth in section B above), it should be accepted since the observers are risking their lives in the service of the Organization. This is in accord with the workmen's compensation schemes of many countries.

14. This view is borne out by the judgement of the United Nations Administrative Tribunal in the *Davidson* case (Judgement No. 587). While that case concerned a claim by a staff member under Appendix D, rather than a claim by an observer under the Notes, the case involved an interpretation of the criteria for compensation under article 2 (b) of Appendix D, which are essentially the same as the criteria under the Notes. Therefore, the judgement provides important guidance in interpreting the Notes.

15. In that case, the staff member suffered a fatal heart attack in Bangui, in the Central African Republic. The reason for the heart attack was not clear, as he received limited medical attention prior to his death. However, the files clearly established that he had worked extremely long hours and that even elementary medical facilities were lacking in Bangui. After the widow's claim was denied by the Advisory Board on Compensation Claims, the widow appealed to the Joint Appeals Board, which recommended that the case be reopened and that the claim not be assessed so narrowly. The matter was reopened and a Medical Board constituted. The Medical Board, inter alia, found that the absence of medical facilities in Bangui was a special hazard but, in the absence of medical evidence as to the impact of this on the death (since there was very little in the way of records other than a few comments from a local doctor), the Board could not find that this was a cause of death. The Advisory Board, without specifying reasons, again denied the claim in the light of the Medical Board report.

16. The Tribunal was very critical of the operation of the Medical Board because, rather than dealing with the *medical* causes of death, it made findings as to whether the cause of death was compensable, which the Tribunal held was a legal function. The Tribunal also found that the Medical Board should not have concluded that excessive workload was not of sufficient weight for the death to be considered as a result of performing official duties, as required by Appendix D, since such a conclusion on the meaning of the provisions of Appendix D was not a medical assessment of the condition of the deceased but a legal interpretation of a statutory provision (see judgement, paras. V-VIII).

17. Most important for the purposes of the issue under consideration, the Tribunal made it clear that if staff are assigned to areas of special hazards they, or their dependants, should not have to bear the onus to establish that death or injury occurred as a result of those hazards. In the words of the Tribunal:

“XV. The consent of a staff member, such as the Applicant’s husband, to assignment to an area of special hazards provides no basis for a contention by the Respondent that the staff member thereby assumed the risks involved. Article 2 (b) (ii) of Appendix D would make no sense at all if consent to an assignment that the Secretary-General is authorized to make under the Staff Regulations were held to be tantamount to assumption of the risk of special hazard by the staff member. Nor, when a staff member is assigned to an area of special hazards, would it be fair to shift the associated risks to the staff member by establishing unreasonably restrictive standards for the application of article 2 (b) (ii). The Tribunal does not understand that provision to be aimed at creating unreasonably difficult barriers under Appendix D in cases such as this. *If, as here, a Medical Board properly finds the existence of a special hazard, constituting an aggravating factor, which decreased the chances of survival, that is tantamount to a finding that the special hazard played enough of a role in the chain of causation to determine that death occurred as a result.* The Tribunal concludes that, in the circumstances of this case, the death occurred under article 2 (b) (ii), as a result of the special hazard of unavailability of adequate facilities and personnel in Bangui for dealing with cardiac emergencies. Accordingly, the Respondent’s decision must be rescinded and the Applicant is entitled to compensation under staff rule 106.4 and Appendix D.” (emphasis added)

18. The basic premise of the judgement is that, while the Secretary-General may assign staff to any duty station, including difficult duty stations, such staff must be taken care of if they fall ill and their dependants must be compensated if the staff die in service. The same premise should apply, by analogy, to observers who are sent to difficult field missions in hostile and stressful environments. Another important aspect of the judgement relates to the burden of proof in cases where the cause of death, illness or injury is not apparent, in particular because of the lack of medical evidence. In missions or other difficult areas, and in all other areas where modern medical facilities are not immediately available and where the staff must work long hours under stress, the Administration should not rely on narrow interpretations of the Notes, in the case of observers, or of Appendix D, in the case of staff members, which is designed to provide a social benefit.

D. *Specific questions to be raised by the Advisory Board on Compensation Claims when it considers such claims*

19. We have given much thought to your request that we provide you with the specific questions the Advisory Board on Compensation Claims should be raising when it considers these types of claims. As you can appreciate, however, every case must be determined on the basis of its particular facts and circumstances, and there is no fixed formula or set of questions on the basis of which such a determination may be made.

20. Accordingly, the determination of whether compensation is warranted in the cases set forth in paragraph 2 of your memorandum (and reproduced in paragraph 2 of this memorandum) would have to depend on an analysis of the particular circumstances and facts of every case. However, a review of the three cri-

teria should enable you to apply those criteria to the facts of a particular case, bearing in mind that such criteria should be considered liberally and not in an unduly restrictive manner. Should the Advisory Board on Compensation Claims so request, we would be pleased to review any of these cases and give you our views.

7 August 1997

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## PERSONNEL

### 3. ACCEPTANCE OF GIFTS BY UNITED NATIONS STAFF MEMBERS—STAFF REGULATION 1.6—STAFF RULE 101.9

#### *Memorandum to the Chef de Cabinet of the Secretary-General*

1. This is with reference to your note of 15 July 1997 requesting advice, from the Under-Secretary-General for Management and the Legal Counsel on a priority basis, concerning the rules and practice of the Organization regarding acceptance of gifts by United Nations staff members. The Legal Counsel set out below the legal framework, leaving it to the Under-Secretary-General for Management to provide you with information on how the rules are administered.

#### *Summary advice*

2. In accordance with the staff regulations and staff rules described below, acceptance of gifts from governmental sources is absolutely prohibited. Acceptance of gifts from other sources may be authorized (prior authorization is required) in exceptional cases.

#### *Detailed reasons for advice*

3. Staff regulation 1.6 provides as follows:

“No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government excepting for war service; nor shall a staff member accept any honour, decoration, favour, gift or remuneration from any source external to the Organization, without first obtaining the approval of the Secretary-General. Approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the terms of regulation 1.2<sup>17</sup> of the Staff Regulations and with the individual’s status as an international civil servant”.

4. Staff rule 101.9 provides as follows:

“(a) No staff member shall accept any honour, decoration, favour, gift or remuneration from an external source without first obtaining the approval of the Secretary-General.

(b) Approval shall not be granted if the honour, decoration, favour, gift or remuneration is from a Government, excepting for decorations for war service earned before the appointment.

(c) If the honour, decoration, favour, gift or remuneration is from a non-governmental source, approval shall be granted only in exceptional

cases and where such acceptance is not incompatible with the terms of staff regulation 1.2 or with the individual's status as an international civil servant.

(d) The provisions of subparagraphs (b) and (c) above do not preclude approval of the acceptance of:

- (i) Academic awards;
- (ii) Reimbursement of travel and subsistence expenses for activities otherwise authorized;
- (iii) Tokens of a commemorative or honorary character, such as scrolls and trophies".

5. Thus, there exists an absolute prohibition for staff from accepting any honour, decoration, favour, gift or remuneration from any Government except for war service prior to joining the Organization. This prohibition is expressly established by staff regulation 1.6 adopted, as are all other staff regulations, by the General Assembly, and the Secretary-General has no authority to grant exceptions to this provision.

6. Staff regulation 1.6 provides that acceptance of any honour, decoration, favour, gift or remuneration from a non-governmental source may be authorized only in exceptional cases and where such acceptance is not incompatible with the terms of staff regulation 1.2 or with the individual's status as an international civil servant.

7. Pursuant to the administrative instruction on the subject of "Administration of the Staff Regulations and Staff Rules" (ST/AI/234/Rev.1 of 22 March 1989), the administration of staff regulation 1.6 concerning approval of acceptance of an honour, decoration, favour, gift or remuneration from any source external to the Organization is within the authority of the Assistant Secretary-General for Human Resources Management.

16 July 1997

4. CONDITIONS OF SERVICE OF LOCALLY RECRUITED STAFF—ARTICLE 101 OF THE CHARTER OF THE UNITED NATIONS—ARTICLES II AND V OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Memorandum to the Chief of the Legal Section,  
Office of Human Resources, United Nations Development Programme*

1. This refers to your memoranda dated 17 June 1997 and 2 July 1997 seeking our advice on a note verbale dated 3 June 1997 from the Ministry of Foreign Affairs of a Member State concerning conditions of service of locally recruited staff in, inter alia, international organizations in that Member State.

2. The note verbale advises that the Member State legislation establishes the following requirements for locally recruited staff:

- (a) Such staff must be engaged through a contract which complies with the labour law of the Member State;
- (b) Priority must be given to Member State nationals over other nationals;
- (c) The Organization must pay the employer contribution to the national social security system, for locally recruited staff;

(d) At the end of each year, a list of locally recruited staff must be provided to the Ministry of Foreign Affairs, indicating their nationality, the date of their recruitment and their social security number.

#### *Executive summary*

3. For the reasons stated below, the above-stated requirements, with the exception of the fourth requirement, are not consistent with the clear language of Article 101, paragraph 3, of the Charter of the United Nations, which sets forth the standards in the employment of staff; the principle, which has been universally recognized, that the conditions of service of United Nations staff members are established exclusively by the Staff Regulations promulgated by the General Assembly and the Staff Rules promulgated by the Secretary-General to implement those Regulations; and the position which the Organization has consistently maintained that mandatory contribution to a national social security scheme should not be applicable to staff members, irrespective of nationality and duty station.

#### *Detailed reasons for opinion*

##### *1. United Nations legislative background*

4. The Charter of the United Nations provides as follows:

##### *Article 101, paragraph 1:*

“The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.”

##### *Article 101, paragraph 3:*

“The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.”

5. Pursuant to Article 101, paragraph 1, of the Charter, the authority to establish regulations governing the conditions of service of the staff rests with the General Assembly. Staff regulation 4.1 promulgated by the Assembly pursuant to Article 101, paragraph 1, of the Charter provides that:

“[a]s stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General. Upon appointment, each staff member . . . shall receive a letter of appointment in accordance with the provision of annex II to the present Regulations . . .”

Annex II to the Staff Regulations provides, *inter alia*, that the appointment of staff is subject to the provisions of the Staff Regulations and the Staff Rules applicable to the category of appointment in question.

6. Article II, section 7 (a), and article V, section 18 (b), of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (“General Convention”), to which the Member State became a party in 1957 without reservation, provide as follows:

##### *Article II, section 7*

“The United Nations, its assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services”.

*Article V, section 18*

“Officials of the United Nations shall:

...

(b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations”.

By its resolution 76 (I) of 7 December 1946, the General Assembly approved that the provisions in articles V and VII (the latter provides for the issuance of the United Nations laissez-passer to “officials”) of the General Convention should apply to all staff members of the United Nations, with the exception of those “recruited locally and assigned to hourly rates”. Therefore, locally recruited staff of the Organization, with the exception of those paid at hourly rates, are entitled to the privileges and immunities accorded to “officials” under articles V and VII of the General Convention.

7. The Standard Basic Assistance Agreement signed by the Government of the Member State and UNDP on 13 May 1982 provides, in relevant part and in the English translation, as follows:

*“Article IX. Privileges and immunities*

“1. The Government shall apply to the United Nations and its organs, including UNDP and United Nations subsidiary organs acting as UNDP Executing Agencies, their property, funds and assets, and to their 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”.

*“Article II. Forms of assistance*

“4. (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 from time to time of the names of the members, and of the families of the members, of the mission, and of changes in the status of such persons”.

*II. Application to Member State legislation*

8. Pursuant to the above provisions in the Charter and the Staff Regulations, the United Nations has maintained the position, which has been universally recognized, that the conditions of service of United Nations staff members are established exclusively by the Staff Regulations promulgated by the General Assembly and the Staff Rules promulgated by the Secretary-General to implement those Regulations and that, consequently, the conditions of service of staff members are not subject to national labour legislation.

9. Although local conditions of employment are taken into account in determining General Service emoluments and although the Charter requires that due consideration must be given to geographic distribution in the recruitment of staff (see para. 4 above), a condition requiring the Secretary-General to give *priority* to one nationality over another runs counter to the clear language of Article 101, paragraph 3, of the Charter. Moreover, the new Member State legislation is not consistent with article II, paragraph 4 (b), of the Standard Basic Assistance

Agreement (see para. 7 above), in which the Government of the Member State recognized the right of UNDP to have such staff in the country as it deems appropriate for its proper functioning. In practice, however, locally recruited staff are often nationals of the State in which the United Nations office is located, as locally recruited staff occupy positions which usually require fluency in the local language.

10. Moreover, as the Staff Regulations and Rules provide for comprehensive pension and social security schemes for staff members,<sup>18</sup> the Organization has consistently maintained the position that mandatory contribution to a national social security scheme should not be applicable to the staff members.<sup>19</sup> The Organization has also maintained the position that such mandatory contribution to a national social security scheme is not consistent with article V, section 18 (b), of the General Convention and article II, paragraph 4 (b), of the Standard Basic Assistance Agreement (see para. 9 above). It has thus been the long-standing policy and practice of the Organization, which has been universally recognized, not to contribute to national social security schemes, at least in those Member States which did not enter a reservation to article V, section 18 (b), of the General Convention.

11. We consider that the supply of information required under the new legislation is consistent with article II, paragraph 4 (b), of the Standard Basic Assistance Agreement.

12. Lastly, we emphasize that our response relates to staff of the Organization, i.e., to individuals holding a Letter of Appointment under the 100, 200 or 300 series of the Staff Rules. Individuals on special service agreements are not staff members of the Organization, but independent contractors, and they thus must comply with local law regarding independent contractors and pay appropriate taxes and social security contributions.

13. We have prepared and attach herewith a draft of a note verbale which the UNDP Resident Representative in the Member State may wish to send to the Ministry of Foreign Affairs of the Member State.

12 September 1997

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## PRIVILEGES AND IMMUNITIES

5. QUESTION WHETHER A MEMBER STATE HAS AN OBLIGATION TO GRANT THE MOST FAVOURABLE LEGAL RATE OF EXCHANGE—ARTICLE II, SECTIONS 3 AND 5, OF THE CONVENTION OF 15 FEBRUARY 1946 ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Facsimile to the legal adviser at the headquarters of the United Nations  
Relief and Works Agency for Palestine Refugees in the Near East*

1. This is with reference to your facsimile of 7 January 1997 concerning the Member State exchange rate. Our comments are as follows.

2. The information provided indicates not only that UNRWA does not enjoy the most favourable rate of exchange in the Member State but also that the central commercial bank of the Member State has frozen UNRWA assets and that Member State authorities have restricted the right of UNRWA to hold and freely transfer its funds in violation of the Convention on the Privileges and Immunities



of the United Nations (the Convention) of which the Member State has been a party since 29 September 1953 without reservation.

3. With respect to the rate of exchange, it should be noted that the Convention does not explicitly provide that Member States have an obligation to grant the Organization the most favourable legal rate of exchange. On the basis of Article 105 of the Charter of the United Nations (discussed in para. 8 below), however, it is the established policy and practice of Member States to grant the United Nations, its organs and subsidiary organs, the most favourable legal rate of exchange. In this connection, the Government of the Member State has itself undertaken a legal obligation to do so in article X (1) (e) of its Agreement with the United Nations Development Programme signed on 12 March 1981.

4. We note that the Government of the Member State has implicitly contested the status of UNRWA as an international organization in its effort to exclude UNRWA from the most favourable rate of exchange applicable to other regional and international organizations. The competent Member State authorities should be reminded that UNRWA was established by the General Assembly in its resolution 302 (IV) of 8 December 1949 and is therefore a subsidiary organ of the United Nations, which is clearly an international organization.

5. As to the freezing of UNRWA assets by the central commercial bank of the Member State, reference should be made to article II, section 3, of the Convention, which provides that "the property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action".

6. Finally, with respect to restrictions on the right of UNRWA to hold and freely transfer its currency, reference should be made to article II, section 5, of the Convention, pursuant to which, "without being restricted by financial controls, regulations or moratoria of any kind,

"(a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency."

7. As a subsidiary organ of the United Nations, UNRWA enjoys the privileges and immunities provided for in the Convention. Furthermore, in accordance with section 34 of the Convention, the Government of the Member State has an obligation to be "in a position under its own law to give effect to the terms of this Convention".

8. Any interpretation of the provisions of the Convention on the Privileges and Immunities of the United Nations must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might, inter alia, increase the financial or other burdens of the Organization have to be viewed as being inconsistent with that provision.

9. The privileges and immunities discussed above are of fundamental interest to the United Nations as a whole.

10 January 1997

## 6. LEGAL STATUS OF GOODWILL AMBASSADORS FOR THE UNITED NATIONS

### *Note to the Office of the Secretary-General*

This refers to your informal request for advice on the legal status accorded to Goodwill Ambassadors for the United Nations in the light of the proposed candidature of The Artist as a United Nations Goodwill Ambassador. In this connection, you forwarded to me a copy of a letter dated 4 April 1997 from The Artist to the Secretary-General, as well as a copy of a letter dated 11 April 1997 from the Director of the United Nations Information Centre (UNIC)-France to you. In his letter, The Artist reiterated the wish he expressed to the Secretary-General during their meeting in Paris on 1 March 1997 to promote the ideals and objectives of the United Nations, particularly in the field of human rights. The Director of UNIC-France recommended in his letter that The Artist should be designated by the Secretary-General as "Messenger de la paix" or "Ambassadeur de bonne volonté des Nations Unies".

A review of our files shows that Goodwill Ambassadors for UNICEF, UNHCR and UNIFEM have included artists such as Sophia Loren, Julie Andrews and Audrey Hepburn. Goodwill Ambassadors in the past were appointed on the basis of a decision taken by the Secretary-General on the recommendation of the executive head of UNICEF, UNHCR or UNIFEM. While the Director of UNIC-France has recommended The Artist as United Nations Goodwill Ambassador, any such decision falls within the discretion of the Secretary-General.

With respect to their status, Goodwill Ambassadors are not considered staff members of the United Nations and are therefore not subject to the Staff Regulations and Rules. Accordingly, Goodwill Ambassadors should not be granted a United Nations Letter of Appointment. Instead, a letter of designation is usually issued by the competent authority (in the case of UNICEF by the Executive Director, and in the case of UNHCR by the High Commissioner) setting out the duties of the Goodwill Ambassadors, specifying their status and the duration of their term as well as the nature of their entitlements. Letters designating Goodwill Ambassadors are usually submitted to the Office of Legal Affairs for review and clearance.

Goodwill Ambassadors are not paid a salary but receive a symbolic payment (the practice of UNICEF is to pay a dollar a year).

Goodwill Ambassadors are considered as having the status of "expert on mission" for the United Nations within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations adopted on 13 February 1946 ("the General Convention", a copy of which is attached for your ease of reference).

Goodwill Ambassadors are not entitled to a United Nations laissez-passer which, under section 24 of the General Convention, is issued to United Nations officials only. As experts on mission, however, they are entitled to a certificate that they are travelling on official business for the United Nations and, as such, should be accorded facilities for speedy travel similar to those accorded to holders of the United Nations laissez-passer (sections 25 and 26 of the General Convention).

Goodwill Ambassadors may be given travel and per diem allowances when they are travelling on United Nations business.

Even though Goodwill Ambassadors are not staff members, they are covered, while on assignment for the United Nations, by the provisions of Appendix D to the Staff Rules, which is applicable to experts on mission in the event of injury, illness or death.

From a legal point of view, a letter of designation issued to a Goodwill Ambassador should include the following provisions:

“As a Goodwill Ambassador for the United Nations, you will receive a symbolic compensation of \_\_\_\_ per annum. When engaged in approved travel for the United Nations, you may receive, as specified in advance in connection with any particular trip, travel and per diem allowances and have the costs of transportation reimbursed. [Alternatively, it may also be specified that costs relating to travel will not be reimbursed.]

“You will be considered by the United Nations as an expert on mission for the United Nations within the meaning of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations adopted on 13 February 1946. In this capacity, you are entitled to such privileges and immunities as are necessary for the independent exercise of your functions in connection with your mission. Pursuant to article VI, section 23, thereof, these privileges and immunities are granted to you in the interests of the United Nations and not for your personal benefit. The Secretary-General of the United Nations has the right and the duty to waive the immunity in any case where, in his opinion, the immunity would impede the course of justice and where it can be waived without prejudice to the interests of the United Nations.

“In the event of death, injury or illness attributable to the performance of duties in your capacity as Goodwill Ambassador for the United Nations, you, or your dependants, as appropriate, shall be entitled to compensation equivalent to that which would be payable to an official of the United Nations at the P-4, step I,<sup>20</sup> level pursuant to Appendix D to the Staff Rules. Such compensation shall be the sole compensation payable by the United Nations in respect of death, injury or illness.”

1 May 1997

7. STATUS OF FUNDS AWARDED AND TRANSFERRED BY THE UNITED NATIONS COMPENSATION COMMISSION TO GOVERNMENTS

*Letter to the Executive Secretary of the  
United Nations Compensation Commission*

This is in reply to your telefax of 9 May 1997, in which you sought my views concerning the status of the funds awarded and transferred by the United Nations Compensation Commission to Governments for distribution to successful claimants. Your query originates from a request by a Government which has received from the Commission funds corresponding to the proceeds of a number of successful claims. Some unsuccessful claimants have apparently sought to attach these funds, and the Government is enquiring whether funds originating from the Compensation Fund continue to enjoy the privileges and immunities of the United Nations while in the custody of recipient Governments.

As you note in your communication, the Compensation Fund is a fund of the United Nations within the terms of article II of the Convention on the Privilege and Immunities of the United Nations (the "General Convention") and of the Financial Regulations and Rules. As such, funds deposited in accounts of the Compensation Fund enjoy the jurisdictional immunities provided for the Convention. This is clearly set out in part I, paragraph 3, of the report of the Secretary-General of 2 May 1991 (S/22559), in accordance with which the Security Council, by its resolution 692 (1991), decided to establish the Fund and the Commission.

The status of monies awarded by the Governing Council of the Commission to successful claimants has to be ascertained on the basis of the rules and decisions governing the activities of the Commission, as well as of the General Convention.

By section E, paragraphs 18 and 19, of its resolution 687 (1991), the Security Council decided that the function of the Fund would be "to pay compensation" for certain claims against Iraq. The Secretary-General, in paragraph 28 of the above-mentioned report, recommended that payments should be made exclusively to Governments, which would then be responsible for distributing the amounts awarded to successful claimants. The Security Council, by paragraph 5 of resolution 692 (1991), directed the Governing Council to implement the provisions of section E of resolution 687 (1991) taking into account the recommendations of the Secretary-General. The Governing Council, at its 41st meeting, held on 23 March 1994 (S/1994/409, annexes I and II), confirmed that payments would be made to the Governments which had consolidated and submitted successful claims; Governments would be responsible for distributing payments to successful claimants subject to a number of provisions specified in the decision to ensure the transparency of the process.

It is clear from the foregoing that, in accordance with the mandate of the Commission, amounts awarded by the Governing Council are disbursed from the Compensation Fund and transferred by the Secretariat to Governments, which appear, in cases such as that of the Government in question, to exercise the functions of custodians of those monies for the ultimate benefit of the actual claimants on behalf of which the claims were submitted.

Pursuant to article II, section 5, of the General Convention, the United Nations "may hold funds, gold or currency", which shall enjoy the immunities provided for in section 3 of the same article. The condition for the enjoyment by funds of the privileges and immunities of the United Nations is precisely their quality as funds of the Organization, i.e., held under the custody and control of the Secretary-General as Chief Administrative Officer of the United Nations, in accordance with the Financial Regulations and Rules. In the case of the Compensation Fund, however, funds are, upon a decision by the Governing Council, disbursed and transferred from the Fund to the control and custody of the Governments concerned for the payment of claims submitted by them, either on their own behalf or on behalf of their nationals. It is our view that, once such disbursement and transfer have taken place, the funds in question can no longer be considered funds of the United Nations and are no longer protected by the privileges and immunities of the United Nations. This is obviously without prejudice to the status that the monies in question may enjoy under national legislation while in the custody of the Governments.

It should also be noted that the transfer of the funds in question is not necessarily final and irreversible. Paragraph 1 (g) of the decision of the Governing

Council referred to above makes it clear that, should Governments be unable to pay certain claims because the claimants cannot be found, the corresponding amount is to be reimbursed to the Compensation Fund unless otherwise decided by the Governing Council. In the latter case, the funds in question would again be covered by the privileges and immunities of the United Nations once they were deposited into an account of the Compensation Fund.

21 May 1997

8. IMMUNITY OF REPRESENTATIVES AND OBSERVERS OF NON-GOVERNMENTAL ORGANIZATIONS AT UNITED NATIONS MEETINGS

*Memorandum to the Senior Legal Officer,  
United Nations Office at Geneva*

1. This is in reply to your telefax of 21 August 1997, with attachments, concerning a query from the Swiss Permanent Mission as to whether the provisions of article VI, section 19, of the 1946 Interim Arrangements on Privileges and Immunities of the United Nations concluded between the United Nations and Switzerland apply by analogy to a representative of a non-governmental organization participating in the meeting of the Subcommission on Prevention of Discrimination and Protection of Minorities. By way of background to the request, you explain that a Government has requested the Swiss authorities, directly and through Interpol, to prosecute or extradite one of its nationals accused of murder and terrorist crimes who is an accredited representative of an NGO.

2. Whether the above-mentioned provisions may be applied by analogy to NGO representatives participating in United Nations meetings depends on whether the functions discharged by the two categories of persons, and their relationship with the United Nations, justify the extension of the privileges and immunities of experts on mission for the United Nations to NGO representatives or observers. In this connection, it might also be recalled that experts performing missions for the United Nations enjoy broader immunities than those enjoyed by officials of the United Nations, including precisely immunity from personal arrest.

3. A quick review of the practice of the Organization does not reveal any precedent in which the United Nations has claimed that NGO representatives participating in official meetings should be equated to experts on mission for purposes of privileges and immunities. The term "experts on mission for the United Nations" applies to persons performing a mission for the United Nations on the basis of an assignment from either the Secretary-General or a political or perhaps expert organ who are neither representatives of Governments nor officials of the Organization but who, for the independent exercise of their functions in connection with United Nations, must be able to rely on certain privileges and immunities. Examples of such "experts on mission" would be members of, or rapporteurs for, certain commissions and committees serving in their personal capacity, or military observers in peacekeeping operations.<sup>21</sup>

4. In the practice of the Organization and considering the nature of their functions, representatives of NGOs participating in or attending United Nations meetings on the basis of a general invitation from the body concerned fall into a different category. The only immunities required by those attending United Nations proceedings in this capacity are those necessary to enable them to perform

their functions in connection with the meeting they are attending, in particular to enter and leave the country concerned and to speak freely at these meetings. They have no need for, and therefore should not be entitled to, immunities related to other activities, and especially not covering prior alleged criminal enterprises. Even though the Host Country Agreement with Switzerland is entirely silent in this respect, a number of more recent agreements concluded by the United Nations expressly mention representatives of NGOs or persons invited to United Nations premises on official business, for example article IV of the Headquarters Agreement with the United States.

5. In view of the foregoing and without prejudice to the limited privileges and immunities mentioned in the preceding paragraph, it is the position of the Office of Legal Affairs that representatives of NGOs participating in the meeting of a United Nations organ cannot be considered experts on mission.

25 August 1997

9. UNITED NATIONS POSITION ON CONTRIBUTIONS FOR SOCIAL SECURITY SCHEMES UNDER NATIONAL LEGISLATION—STATUS OF CONSULTANTS ENGAGED ON SPECIAL SERVICE AGREEMENTS—ARTICLE II, SECTION 7 (e), OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

*Memorandum to the Chief of the Legal Section, Office of Human Resources,  
United Nations Development Programme*

1. This responds to your memorandum of 16 December concerning the position taken by the competent Member State authorities with respect to the payment of social security contributions by UNDP for locally recruited employees, be they staff members on fixed-term contracts or consultants engaged on special service agreements. Our comments are as follows.

2. It has been consistent United Nations practice and policy, pursued by the Organization for more than four decades, that mandatory contributions for social security schemes under national legislation are considered a form of direct taxation on the United Nations and therefore contrary to the Convention on the Privileges and Immunities of the United Nations (the 1946 Convention), to which the Member State became a party on 26 October 1949 without reservation.

3. Pursuant to the provisions of article II, section 7 (a), of the 1946 Convention, the United Nations, its assets, income and other property shall be exempt from all direct taxes. Furthermore, pursuant to article V, section 18, subparagraph (b), of the 1946 Convention, "officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations". It should be noted in this regard that General Assembly resolution 76 (I) of 7 December 1946 provides "the granting of the privileges and immunities referred to in article V. . . to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates". Thus, locally recruited staff who are not assigned to hourly rates are entitled, irrespective of their nationality, to the exemption from such taxation. The latter applies to staff on permanent as well as fixed-term contracts.

4. As a party to the 1946 Convention, the Member State is not entitled to make use of United Nations emoluments for any tax purposes. The rationale of

the immunity from taxation of salaries paid by the United Nations is to achieve equality of treatment for all officials of the Organization, independently of nationality. These principles were clearly enunciated by the General Assembly in resolution 78 (I) as follows: "In order to achieve full application of the principle of equality among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation salaries and allowances paid out of the budget of the Organization are requested to take early action in the matter."

5. The Organization's exemption from national social security schemes is further evidenced by the fact that the United Nations has its own comprehensive social security scheme for United Nations staff members. The establishment of such a scheme is required under regulation 7.2 of the United Nations Staff Regulations, which are established by the General Assembly pursuant to Article 101, paragraph 1, of the Charter of the United Nations.

6. Consultants engaged on special service agreements are deemed to be experts on mission within the meaning of article VI of the 1946 Convention and do not enjoy immunity from taxation on the salaries paid to them by the United Nations. Thus, while the United Nations will not make contributions for social security schemes in respect of persons engaged on special service agreements, those persons must comply with any tax obligations imposed by the competent Member State authorities. However, as indicated above, the Organization will not withhold taxes due from such consultants, nor will it pay any taxes on their behalf.

7. Finally, any interpretation of the provisions of the 1946 Convention must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might, inter alia, increase the financial or other burdens of the Organization have to be viewed as being inconsistent with that provision.

8. Should you so request, we could bring the foregoing to the attention of the Permanent Mission of the Member State to the United Nations with a formal demand that they resolve the matter in a manner consistent with the privileges and immunities of the United Nations.

23 December 1997

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## PROCEDURAL AND INSTITUTIONAL ISSUES

10. DEFINITION OF THE TERM "DEVELOPING COUNTRIES" AS USED BY THE UNITED NATIONS—GENERAL ASSEMBLY RESOLUTION 47/187 OF 22 DECEMBER 1992

### *Letter to the Deputy Director of the United Nations Development Fund for Women*

I am replying to your letter, with attachments, in which you seek my advice as to whether the United Nations Development Fund for Women, in the light of its legislative mandate, can carry out activities in Eastern European countries.

As you noted in your letter, General Assembly resolutions 31/133 of 16 December 1976 and 39/125 of 14 December 1984 indicate that UNIFEM is supposed to utilize its resources to supplement activities in areas designed to implement the goals of the United Nations Decade for Women, with priority being given to related programmes and projects of the least developed, landlocked and island countries among developing countries. The question is, therefore, whether Eastern European States fall within the definition of "developing countries" as used by the United Nations.

As you know, neither the General Assembly nor the Economic and Social Council has established any formal definition or list of developing countries. There are, however, a number of classifications and lists used by the United Nations for different purposes, which can be used as a guide in determining whether a particular country may be considered a "developing country". These include:

- The list of countries eligible to receive UNDP assistance and the allocation of technical assistance resources;
- The list of developing countries established by the United Nations Statistical Office to be found in the *Statistical Yearbook* or other publications by the Office;
- The lists of countries established in parts A and C of the annex to General Assembly resolution 1995 (XXIX) of 30 December 1964, as amended, which serve as a basis for election to the Trade and Development Board of UNCTAD;
- The tables appearing in the annual reports of the Committee on Contributions of the General Assembly, which are used for the purpose of determining abatements in calculating the scale of assessments to the regular budget of the United Nations;
- The lists of countries contained in document E/1995/L.11 (attached) and referred to in paragraph 2 of General Assembly resolution 50/8 of 1 November 1995, which will be used by the Economic and Social Council and the FAO Council for the election of members of the Executive Board of the World Food Programme.

As to the Eastern European States (which include some former Soviet Republics), they fall within the definition of countries with "economies in transition", a term introduced by the General Assembly in its resolution 47/187 of 22 December 1992. The resolution, entitled "Integration of the economies in transition into the world economy", addresses the problems faced by "the countries that are transforming their economies from centrally planned to market-oriented ones". In its operative part, the resolution does not equate economies in transition to developing countries as such. However, in paragraph 2, the Assembly refers to the fact that developing countries may figure among economies in transition, while in paragraph 1, the Assembly states that the full integration of economies in transition into the world economy should have a positive impact on world trade, economic growth and development, including that of the developing countries.

In view of the foregoing, the legislative mandate of UNIFEM appears to allow the Fund to carry out its activities in those Eastern European countries which are also developing countries according to United Nations practice. Thus, since UNIFEM is defined in the annex to General Assembly resolution 39/125 as "a separate and identifiable entity in autonomous association with [UNDP]", proj-



ects and programmes by the Fund could, logically, be envisaged in the same Eastern European countries which are eligible to receive UNDP assistance.

7 January 1997

11. REGULATIONS REGARDING CONSULTATIVE RELATIONSHIPS WITH NON-GOVERNMENTAL ORGANIZATIONS—ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1996/31 OF 25 JULY 1996

*Facsimile to the legal office of the Secretary-General,  
United Nations Conference on Trade and Development*

1. This is with reference to your facsimile of 8 January 1997 concerning the participation of non-governmental organizations and experts in the work of UNCTAD. Our comments are as follows.

2. Your first question, in two parts, refers to the interpretation of Economic and Social Council resolution 1996/31 of 25 July 1996 on arrangements for consultation with non-governmental organizations.

(a) Paragraph 5 of part I of the resolution explicitly states that "consultative relationships may be established with international, regional, subregional and national organizations, in conformity with the Charter of the United Nations and the principles and criteria established under the present resolution". Therefore consultative relationships may be established with national non-governmental organizations whose objects and purposes are in conformity with the Charter of the United Nations and which meet the requirements established in the resolution as a whole. Although paragraph 4 of Economic and Social Council resolution 1296 (XLIV) of 23 May 1968 does not appear in Council resolution 1996/31, most of the ideas expressed therein can be found, albeit in a different form, in paragraphs 9 to 12 of Council resolution 1996/31.

(b) Paragraph 8 of Council resolution 1996/31 refers to "consultation with the Member State concerned", not to the approval of the Member State concerned. You will also note that paragraph 8 further provides that "the views expressed by the Member State, if any, shall be communicated to the non-governmental organization concerned, which shall have the opportunity to respond to those views through the Committee on Non-Governmental Organizations". Accordingly, it is for the member States of the Committee on Non-Governmental Organizations and of the Economic and Social Council itself to approve or reject the establishment of a consultative relationship with a particular non-governmental organization on the basis of their own assessment of the views expressed by the Member State concerned *and* the information and responses submitted by the non-governmental organization concerned.

3. You have also proposed that the rules of procedure of the intergovernmental bodies of UNCTAD should be amended to include the participation as observers of experts acting in their personal capacity. Please be advised that General Assembly resolution 1995 (XIX) of 30 December 1964, as amended, by which the Assembly established both UNCTAD and the Trade and Development Board, refers to the participation, without the right to vote, only of representatives of intergovernmental organizations and non-governmental organizations. There is no reference to other categories of observers. Accordingly, any effort to expand observer participation in the work of UNCTAD beyond non-member States, the

specialized agencies and IAEA, other intergovernmental organizations and non-governmental organizations would require the approval of the General Assembly.

9 January 1997

12. MECHANISMS OF THE EXERCISE OF THE RIGHT OF SELF-DETERMINATION BY THE NON-SELF-GOVERNING TERRITORIES

*Letter to the Chairman of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*

I wish to acknowledge receipt of your letter dated 3 February 1997 by which, on behalf of the members of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (hereafter Committee of 24), you seek my views on the following questions:

“What are the internationally acceptable mechanisms of the exercise of the right of self-determination by the Non-Self-Governing Territories and of the internationally acceptable means of ascertaining the wishes of their populations regarding their future political status?”

The principle of equal rights and self-determination of peoples is stated in Article 1, paragraph 2, of the Charter of the United Nations as a basis upon which to develop friendly relations among nations. In Article 55, it is stated that peaceful and friendly relations among nations are based on respect for the principle of equal rights and self-determination of peoples. Even though the term “self-determination” does not appear in Chapters XI and XII of the Charter, the United Nations has used it as one of the basic principles governing the implementation of the Declaration regarding Non-Self-Governing Territories as well as the trusteeship system. As one of the obligations arising from the sacred trust referred to in Article 73, Member States administering Non-Self-Governing Territories accept, inter alia, to develop “self-government, to take due account of the political aspirations of the peoples” (Article 73 b).

The General Assembly has pursued the realization of the principle of self-determination mainly in the context of the process of decolonization, and has expanded and elaborated the framework of the Committee of 24. A number of declarations and resolutions adopted by the General Assembly are of particular importance in this context and contain provisions relevant to your queries. In particular, I wish to recall the following instruments:

- Resolution 742 (VIII) of 27 November 1953, entitled “Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government”;
- Resolution 1514 (XV) of 14 December 1960, entitled “Declaration on the Granting of Independence to Colonial Countries and Peoples”;
- Resolution 1541 (XV) of 15 December 1960, entitled “Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter”;

- Resolution 2625 (XXV) of 24 October 1970, entitled “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations”;
- Advisory opinion on Western Sahara, rendered by the International Court of Justice on 16 October 1975, in which the court reviewed the development of the principles of self-determination in the practice of the United Nations (paras. 54-59).

A review of the relevant provisions of the resolutions listed above reveals that the General Assembly did not set out specific modalities or mechanisms which would apply on a general basis to all Non-Self-Governing Territories for the exercise of their right of self-determination. However, those resolutions clearly emphasize as a general principle that the process of self-determination should be based on the exercise of an informed, free and voluntary choice by the peoples concerned. Thus, for example, in paragraph 5 of resolution 742 (VIII), the Assembly considered that the validity of any form of association of the Territory with another country “depends on the freely expressed will of the people at the time of the taking of the decision”. In the second part of the annex to the resolution, the Assembly lists “the opinion of the population of the Territory, freely expressed by informed and democratic processes”, as a factor indicative of the attainment of other separate systems of self-government. In the annex to resolution 1541 (XV), principle VII states that free association with an independent State, listed in principle VI as one of the forms of self-government, “should be the result of a free and voluntary choice by the peoples of the Territory concerned expressed through informed and democratic processes”, and that “the associated Territory should have the right to determine its internal constitution”. Similar expressions are used in principle IX concerning integration with an independent State. Moreover, in resolution 2625 (XXV), the General Assembly declared, *inter alia*, that “the establishment of a sovereign and independent State . . . or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people”.

The International Court of Justice, in the above-mentioned advisory opinion, also pointed out that:

“The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given Territory. Those instances were based either on the consideration that a certain population did not constitute a ‘people’ entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances” (para. 59).

As to the specific manners by which the expression of the free will of the peoples concerned is to take place, the resolutions of the General Assembly referred to above provide no particular guidance. Thus, reference should be made to the practice of the General Assembly when considering individual Territories, especially for the determination of the cessation of the reporting obligations imposed upon administering Powers by Article 73 *e* of the Charter. The practice shows that the right of self-determination by Non-Self-Governing Territories has been exercised in a variety of ways, such as the holding of referendums or plebiscites in the Territories, negotiations or agreements between the representative bodies of the peoples living in the Territories, etc.

The practice reveals that the General Assembly has acted on a case-by-case basis in determining whether the modalities for the attainment of self-government by the peoples concerned satisfied the requirements of the Charter and of the relevant Assembly resolutions. In dealing with specific instances of decolonization in this fashion, the General Assembly decided at an early date that the determination as to whether a Territory fell within Chapter XI of the Charter of the United Nations—and this information under Article 73 *e* had to be submitted by the administering Power—could not be left to the sole discretion of the latter. By its resolution 334 (IV) of 2 December 1949, the Assembly considered that it was within its responsibility to express an opinion “on the principles which have guided or which may in future guide the Members concerned in enumerating” the Territories in question. In paragraph 3 of resolution 742 (VIII), the Assembly recommended that the factors annexed to the resolution “should be used by the General Assembly and the Administering Members as a guide in determining whether any Territory . . . is or is no longer within the scope of Chapter XI of the Charter in order that . . . a decision may be taken by the General Assembly on the continuation or cessation of the transmission of information required by Chapter XI of the Charter”. The Assembly has continued consistently to affirm in general terms its authority to determine when a Non-Self-Governing Territory has exercised its right of self-determination. Resolutions adopted at subsequent sessions of the Assembly under the title “Information from Non-Self-Governing Territories transmitted under Article 73 *e* of the Charter of the United Nations” customarily contain an operative paragraph by which the Assembly reaffirms “that, in the absence of a decision by the General Assembly itself that a Non-Self-Governing Territory has attained a full measure of self-government in terms of Chapter XI of the Charter, the administering Power concerned should continue to transmit information under Article 73 *e* of the Charter with respect to that Territory” (see, for example, paragraph 2 of resolution 50/32 of 6 December 1995).

The General Assembly has also exercised this power in individual cases under its consideration, for example in the case of the Territories administered by Portugal, which were kept on the list of Non-Self-Governing Territories notwithstanding the denial by the administering Power that their status characterized them as such. Reference should thus be made to the specific cases dealt with by the Assembly. In this connection, if a more thorough review of the available practice is deemed necessary by your Committee, it should be undertaken by the competent unit of the substantive secretariat, namely, the Department of Political Affairs.

Also as regards your second query, namely, what the internationally acceptable means are of ascertaining the wishes of the populations of Non-Self-Governing Territories regarding their future political status, reference should principally be made to the practice of the General Assembly and to the circumstances under which it satisfied itself that the will of the peoples living in Non-Self-Governing Territories had indeed been ascertained, and their choices respected by the administering Powers. In several cases, for example, the Assembly reached this conclusion through an examination of the documentation supplied by the administering Power and its explanations (e.g., resolution 1469 (XIV) of 12 December 1959 concerning Alaska and Hawaii); in other cases, United Nations missions or representatives visited the Territories concerned to supervise the elections or referendums through which the future status of the Territory would be determined (e.g., resolutions 2005 (XIX) of 18 February 1965 and 2064 (XX) of 16 December 1965, concerning the Cook Islands). The approach followed by the General Assembly and the Committee of 24 has been to consider

specific situations on a case-by-case basis, within the general framework of the applicable General Assembly resolutions. Should the Committee also in this case deem it necessary to receive a thorough study on the basis of existing practice, such study should be undertaken by the competent unit of the substantive secretariat.

11 February 1997

13. SUBMISSION OF PROPOSALS BY INTERGOVERNMENTAL ORGANIZATIONS IN FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL—RULES OF PROCEDURE 69 (3), 71 (b) AND 74 OF THE FUNCTIONAL COMMISSIONS OF THE COUNCIL—COUNCIL DECISION 1995/209

*Facsimile to the Senior Legal Liaison Officer,  
United Nations Office at Vienna*

1. This is with reference to your facsimile of 6 February 1997 concerning the submission of proposals by the European Community in the Commission on Narcotic Drugs. Our comments are as follows.

2. The rules of procedure of the functional commissions of the Economic and Social Council provide for the submission of proposals by States members of the Commission, by Members of the United Nations and any other States that are not members of the Commission, and by the specialized agencies. Rule 69 (3) provides that States not members of the Commission “shall not have the right to vote, but may submit proposals which may be put to the vote on request of any member of the Commission or of the subsidiary organ concerned”. Pursuant to rule 71 (b), specialized agencies shall be entitled “to participate, without the right to vote, through their representatives, in deliberations with respect to items of concern to them and to submit proposals regarding such items, which may be put to the vote at the request of any member of the Commission or of the subsidiary organ concerned”.

3. Rule 74 on the participation of other intergovernmental organizations merely provides that representatives of such organizations “may participate, without the right to vote, in the deliberations of the Commission on questions within the scope of the activities of the organizations”. Representatives of the European Community do not therefore have the right to submit proposals.

4. As you will recall, however, in its decision 1995/201 of 8 February 1995, the Economic and Social Council adopted modalities for the full participation of the European Community in the Commission on Sustainable Development which provided, inter alia, that “the Community shall not have the right to vote but may submit proposals that shall be put to the vote if any member of the Commission so requests”. In that decision, the Council indicated that, subject to its approval, similar arrangements shall apply to any other regional or subregional economic integration organization to which its member States have transferred competence over a range of matters within the purview of the Commission on Sustainable Development, including the authority to make decisions binding on its member States in respect of those matters. The latter provisions were referenced in a footnote to rule 74 of the rules of procedure of the functional commissions of the Council.

5. Therefore, if it so desires and by means of a separate decision relating to the participation of the European Community as a non-member of the Commis-

sion, the Economic and Social Council could also accord the European Community the right to submit proposals in the Commission on Narcotic Drugs.

11 February 1997

#### 14. RESTRUCTURING OF THE SECRETARIAT—AUTHORITY OF THE SECRETARY-GENERAL

##### *Note to the Secretary-General*

##### *Summary*

1. This note examines two issues concerning the authority of the Secretary-General to restructure the Secretariat: (a) whether the Secretary-General, on his own authority, may create, consolidate and abolish departments/offices and transfer resources among departments/offices without prior authorization by the General Assembly; and (b) whether Secretary-General's bulletins must be issued to create, consolidate and abolish departments/offices, in other words, the proper use of Secretary-General's bulletins within the context of restructuring exercises.

2. The actions taken by the Secretary-General in the 1992 restructuring of the Secretariat and the subsequent decisions by the General Assembly indicate that the Secretary-General has certain flexibility in his authority to streamline and rationalize the structure of the Secretariat without *prior* approval for taking such actions by the General Assembly. However, more flexibility is needed to enable the Secretary-General to administer the Secretariat rationally.

3. I recommend that the Secretary-General take the position that the Financial Regulations and Rules should not be interpreted to limit his authority to streamline and rationalize the Secretariat and that it is crucial that he have the authority to organize the Secretariat to deliver the programmes mandated by the General Assembly subject to the following limits:

(a) The Secretary-General cannot create or upgrade posts without Assembly authorization;

(b) The Secretary-General must, as soon as practicable, present to the General Assembly for its approval a budget proposal reflecting the changes in the Secretariat as a result of a restructuring exercise;

(c) The Secretary-General cannot reformulate entire subprogrammes or introduce new programmes in the programme budget without the prior approval of the General Assembly.

4. With respect to the procedure for restructuring work units, decisions to create, consolidate and/or abolish departments/offices must be made through the issuance of Secretary-General's bulletins.

##### *Background*

##### *(a) Power of the Secretary-General to restructure the Secretariat*

5. Article 97 of the Charter of the United Nations provides, *inter alia*, that the Secretary-General "shall be the chief administrative officer of the Organization". Article 101 of the Charter provides, *inter alia*, that "[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly". As Chief Administrative Officer, the Secretary-General is responsi-

ble for the administration of the Secretariat and its staff and for the delivery of programmes and the implementation of policies laid down by the other organs of the United Nations. The Secretary-General also has authority to determine and to change the manner in which the functions entrusted to him and to the Secretariat are to be performed.<sup>22</sup>

6. Notably, the General Assembly, at its first session, explicitly recognized the authority of the Secretary-General to restructure the Secretariat. In its resolution 13 (I) of 13 February 1946 (see annex 1), the Assembly directed the Secretary-General to create principal units of the Secretariat, authorized the Secretary-General to appoint Assistant Secretaries-General (there were no Under-Secretaries-General at that time) and other officials and employees, and to "make such changes in the initial structure [of the Secretariat] as may be required to the end that the most effective distribution of responsibilities and functions among the units of the Secretariat may be achieved" (resolution 13 (I), para. 4).

7. However, the transfer of resources resulting from a restructuring exercise requires General Assembly approval as the structure of the Secretariat is, in effect, determined by the programme budget of the Organization, which is proposed by the Secretary-General and adopted by the General Assembly (articles III and IV of the Financial Regulations and Rules). In this regard, financial regulation 4.5 provides: "No transfer between appropriation sections may be made without authorization by the General Assembly."<sup>23</sup> Financial rule 104.4 provides that:

"The General Assembly, in its biennial appropriation resolutions, has delegated to the Advisory Committee [on Administrative and Budgetary Questions] the authority contained in regulation 4.5 to make transfers between appropriation sections of the programme budget. When such a delegation exists, requests shall be made to that Committee for authority to make transfers between appropriation sections."

In addition, regulation 5.2 of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (ST/SGB/PPBME/Rules/1 (1987)) ("PPBME Rules") states:

"An entire subprogramme shall not be reformulated nor a new programme introduced in the programme budget without the prior approval of an intergovernmental body and the General Assembly. The Secretary-General may make such proposal for review by the relevant intergovernmental body if he considers that circumstances so warrant."

Rule 105.1 (e) of the PPBME Rules further states that:

"Changes in the programme of work requiring net additional resources may not be implemented before they are approved by the General Assembly".

Therefore, the authority of the Secretary-General to restructure the Secretariat is limited by the budget of the Organization.

8. In this connection, the Legal Counsel, in an opinion addressed to the Controller dated 30 September 1975, concluded that the General Assembly, in approving the regular budget, approves the number of established posts at the various levels as indicated in the reports of the Fifth Committee, rather than approving only the global sums expressed in the resolutions. From the above, the Office of Legal Affairs concluded in the 1982 Comprehensive Study that:

“... while the Secretary-General has certain freedom in moving posts horizontally (intra-sectionally on his own authority, inter-sectionally with the concurrence of the Advisory Committee), from one office or department to another, he can only do so within the total number of posts indicated in the budget document whose totals were approved by the General Assembly; *he cannot on his own authority create or upgrade posts.*” (1982 Comprehensive Study, para. 28, emphasis added.)

These Regulations and Rules demonstrate that (a) the Secretary-General may move posts within an “appropriation section” on his own authority, (b) he may move posts between “appropriation sections” with the concurrence of the Advisory Committee, and (c) the creation and abolition of *posts* requires General Assembly approval. As a practical matter, in cases of any significant transfer of resources, the Secretary-General seeks the approval or acquiescence of the General Assembly. However, as noted in paragraph 20 of the Advisory Committee report (A/47/7/Add.1) of 7 October 1992 and paragraph 36 of the report (A/47/7/Add.15) of 24 March 1993, it appears that in recent years the authority for most transfers of resources has been done on an *ex post facto* basis, through the submission of expenditure reports on each “section” after the accounts are closed (see para. 25 below).

9. A recent example of the Secretary-General’s practice in restructuring the Secretariat is the exercise launched by Secretary-General Boutros-Ghali in 1992.<sup>24</sup> As indicated below, the first phase of the 1992 restructuring was introduced and implemented by the Secretary-General and was approved by the General Assembly after the changes were implemented (see para. 13 below).<sup>25</sup>

10. On 7 and 13 February 1992, as a first phase in the process of restructuring and streamlining the Secretariat, the Secretary-General announced certain changes in the structure of the Secretariat. The release announced, *inter alia*, the abolition, consolidation and establishment of departments and offices and changes in top-echelon appointments.

11. In his note to the General Assembly dated 21 February 1992, entitled “Restructuring of the Secretariat of the Organization” (A/46/882), the Secretary-General reported on the regrouping and consolidation of departments and offices that he had announced previously.

12. The establishment of new departments and changes in the top echelon, both of which became effective as of 1 March 1992, were announced by Secretary-General’s bulletins ST/SGB/248 and ST/SGB/249 of 16 March 1992 (see annexes 2a and b).<sup>26</sup>

13. By its resolution 46/232 of 2 March 1992 (see annex 3), the General Assembly, *inter alia*, approved the launching by the Secretary-General of a further process of restructuring and streamlining of the Secretariat; took note of the actions undertaken by the Secretary-General as set out in his note of 21 February 1992 (A/46/882); set forth the aims of the restructuring; and requested the Secretary-General to submit to the Assembly at the earliest opportunity a report on the programmatic impact as well as the financial implications of organizational changes involved in his initiatives.

14. The restructuring initiated by Secretary-General Boutros-Ghali was endorsed by the General Assembly in subsequent resolutions; see, for example, resolutions 47/212 A and B of 23 December 1992 and 6 May 1993, respectively (see annexes 4a and b).



15. By those resolutions, the General Assembly, while approving and endorsing the restructuring and streamlining of the Secretariat, affirmed its role in the restructuring process. In section II of resolution 47/212 A, the Assembly stated that it:

“2. *Reaffirm[ed]* the role of the General Assembly with regard to the structure of the Secretariat, including the creation, suppression and redeployment of posts financed from the regular budget of the Organization, and request[ed] the Secretary-General to provide the Assembly with comprehensive information on all decisions involving established and temporary high-level posts, including equivalent positions financed from the regular budget and extrabudgetary resources” (see also resolution 47/212 B, second preambular paragraph).

In section II of resolution 47/212 B, the Assembly stated that it:

“2. *Emphasize[d]* that the *restructuring of the Secretariat should be carried out in accordance with the guidance given by the General Assembly, and with the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation and the Financial Regulations and Rules of the United Nations*” (emphasis added).

16. As requested by the General Assembly in paragraph 5 of its resolution 46/232 (see para. 13 above), the Secretary-General, by his report dated 31 July 1992 (A/C.5/47/2) (see annex 5), submitted revised estimates for the programme budget for the biennium 1992-1993 to reflect the restructuring of the Secretariat.

17. Subsequently, in section II of its resolution 47/212 A, the General Assembly, inter alia, regretted that the report of the Secretary-General on revised estimates did not include information on the programmatic aspects and implications of the restructuring as requested in resolution 46/232; requested him to provide the Committee for Programme and Coordination and other concerned intergovernmental bodies with all relevant information on the programmatic aspects and consequences of the restructuring of the Secretariat in the areas of their competence for their comments and recommendations; and took note of the current revised estimates on the understanding that, in early 1993, the Secretary-General would submit revised estimates of the programme budget for the biennium 1992-1993 (see annex 4a).

18. The Secretary-General, in the requested report (A/C.5/47/88), submitted to the General Assembly revised estimates for the programme budget for the biennium 1992-1993. By section I of its resolution 47/212 B, the General Assembly approved revised appropriations for the biennium 1992-1993 as a consequence of the restructuring (annex 4b).

(b) *Requirement for Secretary-General's bulletins to implement restructuring of the Secretariat*

19. ST/SGB/100 of 14 April 1954 (see annex 6) states that Secretary-General's bulletins shall establish, inter alia, the organizational structure of the Secretariat.<sup>27</sup>

20. The procedure to establish changes in the structure of the Secretariat is set out in Secretary-General's bulletin ST/SGB/150/Rev.1 of 1 June 1977, entitled “Changes in the functions and organization of Secretariat units” (see annex 7). The bulletin provides, inter alia, that the “establishment of new major organi-

zational units shall be *announced* in the form of Secretary-General's bulletins . . . [and] appropriate statements relating to the new unit must be incorporated *subsequently* in the Organization Manual" and that "[c]hanges in functions and organization [which include the establishment of a new organizational unit] *shall take effect only after review of the draft revised text and justification for the change, and approval by the Secretary-General*" (annex 7, paras. 1 (b) and 5, emphasis added). Thus, it is clear that the establishment and regrouping of new departments/offices require issuance of Secretary-General's bulletins.

21. The Organization Manual (ST/SGB/Organization), dated 8 August 1996, entitled "A Concise Guide to the Functions and Organization of the Secretariat—Introduction" (the "Manual"),<sup>28</sup> which superseded document ST/SGB/Organization of 8 June 1989, provides that the Organization Manual covers the functions and organization of the units within the Secretariat for which "the Secretary-General is directly responsible to the General Assembly" (Manual, para. 2) and the Manual "describes the functions and organization of those departments/offices whose work programmes are financed fully or partly from the regular budget of the United Nations" (ibid., para. 5). The Organization Manual is published in loose-leaf form for each department/office and "[t]he responsibility for initiating the revision of texts of the Manual following any changes that have been authorized lies with the department/office concerned" (ibid., para. 10).

22. In this connection, as noted in paragraph 12 above, the extensive restructuring announced by the Secretary-General in February 1992 was reflected in Secretary-General's bulletins ST/SGB/248 and ST/SGB/249 (see annex 2a and b).

23. As far as the Organization Manual is concerned, the recent practices seem to indicate that there is often a long delay in the issuance of a revision to the Organization Manual for a newly established department/office. For example, the Manual section for the Department of Political Affairs (ST/SGB/Organization, Section: DPA), which was established in March 1992, was issued on 15 February 1996, four years after its establishment.<sup>29</sup>

### *Analysis*

#### *(a) Power of the Secretary-General to restructure the Secretariat*

24. It goes without saying that the General Assembly, as legislature, can limit the authority of the Secretary-General. From a purely legal point of view, there is no question about this. However, it must be realized that the requirement of a prior Assembly resolution to make changes in the Secretariat would have a very negative effect on its efficiency; even limited changes might take months, perhaps more than a year, to implement. In this respect, it must be emphasized that the structure of the Secretariat is designed for one purpose, namely to deliver the programmes approved by the General Assembly in adopting the budget of the Organization. From a managerial point of view it is therefore obvious that the Secretary-General, as the Chief Administrative Officer of the Organization, must have a considerable leeway to take action as necessary to rationalize and streamline the Secretariat functions. Recognition of this need is also demonstrated by the actions taken by the Secretary-General in 1992 and the way these actions were treated by the General Assembly.

25. Notably, the Secretary-General, in his report to the Fifth Committee on revised estimates for the programme budget for the biennium 1992-1993

(A/C.5/47/2) of 31 July 1992 (see annex 5), expressed the need for flexibility in his authority to transfer resources. In paragraphs 16 to 25 of the report, he stated, inter alia, that the current mechanisms for adjusting staff resources, under which transfers of posts and resources required the approval of the General Assembly or concurrence of the Advisory Committee in between sessions of the Assembly, "do not permit a rapid response by the Secretary-General to changing needs and circumstances" (see annex 5, para. 18). The Secretary-General stated further that he:

"believes that efficient use of the resources appropriated by the General Assembly requires, inter alia, a certain degree of flexibility in the management of resources. The fundamental principles of programme budgeting, including the new features added by the reforms initiated through resolution 41/213, are hampered by an excessive rigidity in the administration of the human and financial resources put at the disposal of the Secretary-General for the fulfilment of the mandates adopted by the General Assembly". (See annex 5, para. 21.)

The Secretary-General further indicated that, in view of the above, an analysis was made of the staff resources available to departments affected by the restructuring and a limited number of posts were identified for redeployment, and that decisions concerning redeployment of those identified posts "would be taken in relation to the immediate needs of the various parts of the Secretariat. *The Assembly will be informed accordingly.*" (See annex 5, para. 21, emphasis added.)

26. The authority of the Secretary-General vis-à-vis the General Assembly brings to the forefront the issue of the rational administration of the Organization. A certain parallel can be drawn to the principal issue of separation of powers between a legislature and an executive. It goes without saying that it is natural for the General Assembly and the Secretary-General, who in effect is the personification of the Secretariat, to establish their own authority in accordance with the powers entrusted to them by the Charter, although, obviously, there is a grey area in the middle. However, infringement by either side on the functions of the other would have a serious negative effect on the functioning of the Organization. In our view the time has come for the Secretary-General to further clarify and assert his authority under the Charter of the United Nations vis-à-vis the General Assembly.<sup>30</sup> We also believe that the stance of the Secretary-General should be that the Assembly should recognize that, while it alone has the power to establish and modify programmes, the Secretary-General is accountable to it under Articles 97 and 98 of the Charter for programme delivery. Therefore, he needs to be able to organize the Secretariat in an appropriate manner to carry out those mandated programmes. The Secretary-General should note that he must, of course, report to the Assembly and take account of its views. However, the Secretary-General should urge the Assembly not to cripple his management authority.

27. In this regard, we consider it important that relevant regulations and rules of the Organization, e.g., the Financial Regulations and Rules, should not be interpreted to limit the authority and responsibility of the Secretary-General to streamline and rationalize the structure of the Secretariat. In other words, the *Secretary-General should take the position that it is crucial that he have the authority to organize the Secretariat to deliver the programmes mandated by the General Assembly.*<sup>31</sup>

28. Certainly, there are limits in the Secretary-General's authority to restructure the Secretariat. For example, the Secretary-General cannot, on his own

authority, abolish a department/office which is governed by a General Assembly resolution which sets out the precise provisions regulating the department/office in question, e.g., the Office of Internal Oversight Services. However, when it comes to the practical manner in which the Secretariat functions, the Secretary-General must be able to make changes and utilize the staff as necessary to implement Assembly-mandated programmes. Consequently, he must have the authority to transfer resources accordingly, without prior authorization by the Assembly, while respecting the role of the General Assembly under the Charter. This can be accomplished by recognizing the fundamental authority of the Secretary-General, under Articles 97 and 101 of the Charter, to administer the Secretariat and manage the staff, including transfer of staff, subject to the following limits:

(a) The Secretary-General cannot create or upgrade posts without Assembly authorization;

(b) The Secretary-General must, as soon as practicable, present to the General Assembly for its approval a budget proposal reflecting the changes in the Secretariat as a result of a restructuring exercise;

(c) The Secretary-General cannot reformulate entire subprogrammes or introduce new programmes in the programme budget without the prior approval of the General Assembly; see PPBME rule 105.2 (e).<sup>32</sup>

(b) *Requirement for Secretary-General's bulletins to implement restructuring of the Secretariat*

29. As discussed in paragraphs 19 to 23 above, the reform of the Secretary-General's bulletins and administrative instructions is in progress under the initiative of the Office of Legal Affairs and at the request of the Secretary-General. The revised Secretary-General's bulletin entitled "Procedures for the promulgation of administrative issuances", which will supersede Secretary-General's bulletin ST/SGB/100 of 14 April 1954 (see annex 6), Secretary-General's bulletin ST/SGB/150/Rev.1 of 1 June 1977 (see annex 7) and administrative instruction ST/AI/226 of 18 February 1973 and all amendments thereto, is expected to be issued at the end of April 1997. In addition, the issuance of a Secretary-General's bulletin entitled "Information circulars" is expected at the same time. A revised Secretary-General's bulletin entitled "Organization of the Secretariat", which will supersede ST/SGB/Organization of 8 August 1996 and administrative instruction ST/AI/409 of 4 August 1996, is expected to be issued in May 1997.

30. The proposed reform of the Secretary-General's bulletins will, inter alia, clarify the hierarchy of administrative issuances and establish a proper legal framework for the usage of administrative issuances.

### *Conclusion*

31. The actions taken by the Secretary-General in the 1992 restructuring of the Secretariat are a reflection of the need for flexibility in his authority to manage the Secretariat and its human resources in order to carry out Assembly-mandated programmes. As discussed in paragraph 25 above, this need was expressed by the Secretary-General in 1992. As far as the organizational units are concerned, the creation and regrouping of departments/offices require decisions which are made through the issuance of Secretary-General's bulletins.

### *List of annexes*

Annex 1	General Assembly resolution 13 (I) of 13 February 1946
Annex 2a	Secretary-General's bulletin ST/SGB/248 dated 16 March 1992
2b	Secretary-General's bulletin ST/SGB/249 dated 16 March 1992
Annex 3	General Assembly resolution 46/232 of 2 March 1992
Annex 4a	General Assembly resolution 47/212 A of 23 December 1992
4b	General Assembly resolution 47/212 B of 6 May 1993
Annex 5	Report of the Secretary-General to the Fifth Committee dated 31 July 1992 on revised estimates for the proposed programme budget for the biennium 1992-1993 (A/C.5/47/2) (pp. 1-15 only)
Annex 6	Secretary-General's bulletin ST/SGB/100 dated 14 April 1954
Annex 7	Secretary-General's bulletin ST/SGB/150/Rev.1 dated 1 June 1977

22 April 1997

## 15. INSTITUTIONAL ASPECTS OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

### *Memorandum to the Senior Legal Officer, Office of the Secretary-General, UNCTAD*

1. This responds to your facsimile of 13 May 1997 on the above subject, seeking our legal advice regarding several questions arising in the light of the decisions concerning the restructuring of the intergovernmental machinery of UNCTAD adopted on 27 May 1996 by the ninth session of the United Nations Conference on Trade and Development (UNCTAD IX) and incorporated in section III of the Midrand Declaration. The questions raised by you are the following:

- Does the General Assembly by its resolution 49/130 of 19 December 1994 incorporate the Intergovernmental Working Group of Experts on the International Standards of Accounting and Reporting into the intergovernmental machinery of UNCTAD?
- Do the Intergovernmental Group of Experts on Restrictive Business Practice and the Intergovernmental Working Group of Experts on the International Standards of Accounting and Reporting continue to exist after UNCTAD IX?
- Can the two aforementioned bodies be considered “expert meetings”?
- Should these two bodies be counted among the 10 expert meetings referred to in paragraph 114 of the Midrand Declaration?
- Can the Trade and Development Board establish bodies other than those referred to in paragraph 108 (Commissions) and paragraph 114 (expert meetings) of the Midrand Declaration?

2. In the opening paragraph of the facsimile you point out that you seek clarification on the above questions at the request of the President of the Trade and Development Board. This Office gives formal legal opinions only at the request of intergovernmental bodies of the Organization or at the request of United

Nations offices or programmes. Therefore, we respond to your questions on an informal basis and would appreciate your conveying this understanding to the President of the Board.

*Midrand Declaration and its effect on the institutional structure of UNCTAD*

3. By its resolution 1995 (XIX) of 30 December 1964, the General Assembly established UNCTAD as one of its subsidiary organs and decided that institutionally UNCTAD would consist of the United Nations Conference on Trade and Development (the Conference), the Trade and Development Board (the Board) and a full-time secretariat, functioning within the United Nations Secretariat and headed by the Secretary-General of the Conference, who is appointed by the Secretary-General of the United Nations and confirmed by the General Assembly. Paragraph 23 of the resolution defines the functions of the Conference and the Board, including the authority of the latter to establish such subsidiary organs as may be necessary for the effective discharge of its functions.

4. The principal functions of the Conference as formulated in General Assembly resolution 1995 (XIX) are quite broad. However, they do not empower the Conference to restrict the right of the Board to establish its subsidiary organs or to abolish the existing subsidiary organs of the Board.

5. According to the Midrand Declaration, the Conference, recognizing the need to revitalize and remodel the intergovernmental machinery of UNCTAD, decided to restructure it in accordance with the future work programme of UNCTAD (paras. 101 and 105). To that end, the Conference approved a new structure of the intergovernmental machinery which, inter alia, provides that "the Trade and Development Board can set up subsidiary bodies, known as Commissions . . . it can create new bodies and abolish existing ones, on the basis of the priorities of the organization and the work accomplished" (para. 107 (f)). The Conference further decided that at present the Board should have three such commissions: the Commission on Investment, Technology and Related Financial Issues; the Commission on Trade in Goods and Services, and Commodities; and the Commission on Enterprise, Business Facilitation and Development. Each commission may convene expert meetings of short duration, not exceeding three days. According to the Declaration, the total number of such meetings should not exceed 10 per year (paras. 108 and 114).

6. In a separate paragraph the Conference also confirmed the convening of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting.

7. It appears from the foregoing that the provisions of the Midrand Declaration concerning the power of the Board to establish its subsidiary organs and to regulate their activities are to some extent at variance with the relevant provisions of General Assembly resolution 1994 (XIX) concerning the establishment of UNCTAD. It is our understanding, however, that given the fact that the General Assembly in its resolution 51/167 of 16 December 1996 welcomed the adoption by UNCTAD of far-reaching reforms, as embodied in the Midrand Declaration, the power of the Board to establish its subsidiary organs is currently regulated as defined in the Midrand Declaration.

8. It should be observed at the same time that since UNCTAD is an organ of the General Assembly and the Board is required to report to the Assembly through the Economic and Social Council, the General Assembly has the author-

ity to establish subsidiary bodies of UNCTAD in addition to those referred to in the Midrand Declaration.

*Intergovernmental Working Group of Experts on the International Standards of Accounting and Reporting*

9. The above-named Working Group was established by the Economic and Social Council (resolution 1982/69 of 27 October 1982), acting on the recommendation of the Commission on Transnational Corporations. Members of the Working Group are elected by the Council. The most recent elections were held on 1 May 1997. Under the resolution of the Council, the Working Group is to report to the Commission on Transnational Corporations. The latter is required to review the work of the Working Group, including its mandate and achievements. Following the integration of the Commission (under the name of the Commission on International Investment and Transnational Corporations) into the institutional machinery of UNCTAD pursuant to a decision by the Economic and Social Council (resolution 1994/1 of 14 July 1994) endorsed by the General Assembly (resolution 49/130 of 19 December 1994), the Commission retained its authority over the work of the Working Group.

10. According to the Midrand Declaration, the Commission is now incorporated into a newly created Commission on Investment, Technology and Related Financial Issues. As noted above, the Midrand Declaration in a separate provision confirms the convening of the Working Group.

11. In the light of the foregoing, we are of the view that, since General Assembly resolution 49/130 clearly states that, after its transfer to UNCTAD, the newly named Commission on International Investment and Transnational Corporations should continue to keep under review the work of the above-named Working Group, the Assembly by that resolution also in effect incorporated the Working Group into the institutional machinery of UNCTAD. Consequently, we answer your first question in the affirmative.

12. With reference to your second question, we would like to point out that, since the Working Group has been established by the Economic and Social Council, it can be dissolved only by a decision of the latter. So far the Council has not taken such a decision. Quite the contrary, as noted above, on 1 May 1997 it elected new members of the Working Group. Thus, the Working Group continues to exist.

13. As to the question of whether meetings of the Working Group should be considered expert meetings and counted among the 10 expert meetings referred to in paragraph 114 of the Midrand Declaration, we are of the view that since the Working Group is an expert body subordinate to one of the commissions of the Board, its meetings can be considered expert meetings within the meaning of paragraph 114 of the Midrand Declaration. However, while the convening of expert meetings according to paragraph 114 is at the discretion of the Commission concerned, the continuation of the Working Group is mandatory. This requirement is reflected in paragraph 115 of the Midrand Declaration, which singles out the Working Group for special treatment.

*Intergovernmental Group of Experts on Restrictive Business Practices*

14. The Group of Experts was established by the Trade and Development Board in its resolution 228 (XXII) of 20 March 1981 pursuant to a recommendation of the United Nations Conference on Restrictive Business Practices, which

had been convened in 1980 by the General Assembly. The recommendation of the Conference was endorsed by the General Assembly in its resolution 35/63 of 5 December 1980.

15. The Conference on 22 April 1980 adopted "The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" (Set of Principles and Rules), which states in section G that international institutional machinery is to be established and that an Intergovernmental Group of Experts on Restrictive Business Practices operating within the framework of a Committee of UNCTAD should act in that capacity. The Set of Principles and Rules provides, inter alia, that the Group should serve as a forum for multilateral consultations, discussions and exchanges of views between States on matters related to the Set of Principles and Rules and should make proposals to follow-up conferences on the improvement and further development of the Set of Principles and Rules.

16. Since 1980, The General Assembly has convened two follow-up conferences on the Set of Principles. The most recent, held in November 1995, made a number of recommendations regarding the working methods of the Group of Experts and proposed to the General Assembly to change the title of the Group to "Intergovernmental Group of Experts on Competitive Law and Policy". To date, neither the General Assembly nor the Trade and Development Board has acted on these recommendations of the Third Conference.

17. It appears from the above that, in the absence of any decision by the Board regarding the dissolution of the Group of Experts and taking into account the recommendations of the Third Conference emphasizing the importance of the work of the Group within the intergovernmental machinery of UNCTAD (para. 13 of the Conference resolution), we believe that the Group of Experts continues to exist after the adoption of the Midrand Declaration.

18. The Group of Experts is an expert body. At the time of its establishment it was decided that the Group should operate within the framework of the Committee on Manufactures of the Board (General Assembly resolution 35/63 of 5 December 1980, para. 3, and Board resolution 228 (XXII), para. 2). In the light of the foregoing, we are of the opinion that meetings of the Group should be considered expert meetings within the meaning of paragraph 114 of the Midrand Declaration and should be counted among the 10 expert meetings referred to in that paragraph.

#### *Power of the Trade and Development Board to establish subsidiary bodies*

19. As noted above, the Midrand Declaration, which received the approval of the General Assembly, states in paragraph 107 (f) that the Board "can set up subsidiary bodies, known as Commissions. It will set clear and specific terms of reference for the Commissions and examine and evaluate their work". The Declaration further provides in the same paragraph that the Board "can create new bodies and abolish existing ones, on the basis of the priorities of the organization and of the work accomplished". The reference to "new bodies" may be interpreted to imply that the power of the Board to establish new organs or bodies is not limited to Commissions. It should be observed, however, that the provisions of the Midrand Declaration concern *modus operandi*, frequency and duration of meetings of the Board, commissions and expert meetings, which are subsidiary organs of commissions. Thus, the Midrand Declaration leaves no room for the es-



tablishment by the Board of any subsidiary bodies other than commissions, and in effect limits its right to set up subsidiary bodies.

29 May 1997

16. PARTICIPATION BY YUGOSLAVIA IN INTERNATIONAL CONFERENCES—  
GENERAL ASSEMBLY RESOLUTIONS 47/1 AND 47/229

*Letter to the Programme Management Specialist, Regional Bureau for Europe  
and the Commonwealth, United Nations Development Programme*

1. This is in reply to your memorandum of 31 July 1997, which was received by this Office on 4 August. You ask whether, in the light of my memorandum of 21 July 1997 concerning the participation of representatives of the Federal Republic of Yugoslavia in the UNDP International Conference on Governance for Sustainable Growth and Equity, Yugoslav officials can be invited to participate in a number of events mentioned in your communication. You suggest that the events mentioned therein have been "initiated and organized by senior United Nations and UNDP officials without any specific instructions from the Executive Board", and thus would not fall under the restrictions provided for in General Assembly resolutions 47/1 of 22 September 1992 and 47/229 of 29 April 1993.

2. The General Assembly, by its resolutions 47/1 and 47/229, decided that the Federal Republic of Yugoslavia shall not participate in the work of the General Assembly and of the Economic and Social Council, respectively. The considered views of the Secretariat on the practical consequences of resolution 47/1 are set out in a letter dated 29 September 1992 by the then Legal Counsel, Mr. Fleischhauer, to the Permanent Representatives of Bosnia and Herzegovina and Croatia. Mr. Fleischhauer stated that, while the resolution did not terminate or suspend Yugoslavia's membership in the United Nations, it affected its participation in the work of the General Assembly. In particular, he stated that "representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer participate in the work of the General Assembly, its subsidiary organs, or conferences and meetings convened by it". Those considerations can be applied, pursuant to resolution 47/229, to the work of the Economic and Social Council, its subsidiary organs, and conferences and meetings convened by it.

3. The Secretariat has consistently applied the aforementioned policy set out in the above resolutions. Consequently, Yugoslavia has not participated either as a full member or as an observer in the meetings of the General Assembly and its Main Committees, or of the Economic and Social Council and its subsidiary organs such as the functional and regional commissions, nor has it been invited to participate in the numerous conferences convened by the General Assembly since 1992, such as the World Conference on Human Rights (Vienna, 1993).

4. Coming now to your queries, I will thus offer only some general observations on the question of whether the relevant General Assembly resolutions may be applicable to the events in question (the two workshops and the conference referred to on your telefax).

5. The two determining elements emerging from the clarifications provided by Mr. Fleischhauer in his letter are whether a meeting or conference has been convened or organized by the General Assembly, the Economic and Social

Council or a subsidiary organ thereof; and whether participants are invited in view of their representing their countries rather than as individuals.

6. As to the first question, it appears that the resolutions in question should be interpreted in the light of their object and purpose, and thus apply not only to meetings and conferences directly convened by the intergovernmental organs referred to in resolutions 47/1 and 47/229, but also to individual meetings and conferences the organization and convening of which, even though originating from the Secretariat, have been approved or endorsed by such organs. If, however, the events in question have been organized and convened by the Secretariat within its function to implement general decisions taken or programmes established by those organs, then the specific events should not be considered as "convened or organized" by the latter and thus would not fall within the purview of resolutions 47/1 or 47/229.

7. In the second respect, it was the clear intent of the General Assembly to exclude representatives of the Federal Republic of Yugoslavia from the meetings and conferences referred to above. However, the applicability of that decision needs to be determined in the light of its object and purpose. While it is obvious that the decision applies to delegates accredited by the Government of the Federal Republic of Yugoslavia, it is our view that it also applies to any person holding public office in the Federal Republic of Yugoslavia who has been invited in view of his or her position in that country rather than in an exclusively personal capacity as an expert or a trainee. If nationals of the Federal Republic of Yugoslavia who do not hold public office are invited to a meeting in their exclusive personal capacity, it seems that this will not be inconsistent with the aforementioned resolutions.

8. The foregoing observations are of a strictly legal nature and are based on the literal interpretation of the resolutions of the General Assembly and the advice provided by Mr. Fleischhauer. At the same time, it should not be overlooked that those decisions lay out a clear policy of the Organization to exclude the Federal Republic of Yugoslavia from a broad range of United Nations activities. It should also be kept in mind that the presence of representatives of the Federal Republic of Yugoslavia has been successfully challenged by other States also in meetings which were not directly affected by the decisions of the General Assembly, e.g., meetings of States parties to a number of treaties deposited with the Secretary-General. The Secretariat has occasionally been criticized for having invited Yugoslav representatives to those meetings. The Secretariat should thus carefully evaluate also, in the light of the aforementioned policy, of the relevant practice and of the specific nature of the United Nations activities concerned, whether it is appropriate to extend an invitation to nationals of the Federal Republic of Yugoslavia.

11 August 1997

17. PRACTICE OF THE UNITED NATIONS IN CASES OF CHALLENGED REPRESENTATION OF A MEMBER STATE—GENERAL ASSEMBLY RESOLUTION 396 (V) OF 14 DECEMBER 1950

*Memorandum to the Under-Secretary-General for Political Affairs*

*Introduction*

1. This is in reply to your memorandum of 5 August 1997, with attachments, in which you seek our advice on the legal aspects of the current situation in Cambodia, in order to advise the Secretary-General on the position that the Secretariat should take in this respect.

2. The question of accreditation involves two interrelated aspects: accreditation to the General Assembly and other United Nations organs; and accreditation to the United Nations as an organization. The events of 5-6 July 1997 and their subsequent developments have produced a situation of confusion about the status of the Cambodian authorities, as well as contradictory requests addressed by those authorities to the Secretary-General and conflicting information in terms of the representation of Cambodia in the United Nations. In this situation, account must be taken of General Assembly resolution 396 (V) of 14 December 1950, by which the Assembly, faced at that time with the conflict about the representation of China, adopted the following guidelines:

*"The General Assembly,*

*"...*

*"1. Recommends that, whenever more than one authority claims to be the Government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;*

*"2. Recommends that, when any such question arises, it should be considered by the General Assembly ...*

*"3. Recommends that the attitude adopted by the General Assembly ... concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies".*

*Previous practice of the United Nations*

3. This policy decision by the Assembly established the way for dealing with cases of competing or challenged representation of a Member State. We wish to recall a few relevant cases by way of illustration, in which competing authorities purported to be the legitimate government of a certain country, or the credentials of the representative of a State were challenged by another State in favour of a competing regime:

(a) *Congo*. The Congo (Leopoldville) was admitted to membership on 20 September 1960. As a result of the political instability within the country, two rival delegations were appointed, respectively, by the Head of State and the Head of Government (who had mutually "deposed" each other), to represent the Congo at the fifteenth session of the General Assembly as well as before the Security Council. The Security Council, at its 899th meeting, held on 14 September 1960, was confronted with letters from the Head of State and the Head of Government

appointing different delegations to participate in the proceedings of the Council. This took place before the Assembly could deal with the matter, and thus the Council could not rely on an Assembly decision on credentials. The Council voted on a proposal by Poland to accept the credentials issued by the Prime Minister, which was rejected. No representative of the Congo was invited to address the Council.

The General Assembly decided, on the proposal of its President, to refer the question of the representation of the Congo to the Credentials Committee, which awaited a clarification of the situation in the Congo and did not report back to the Assembly until the middle of November 1960. In that report, the Committee recommended acceptance of the credentials issued by the Head of State, a recommendation adopted by the Assembly (resolution 1498 (XV) of 22 November 1960). It should be noted that the initial decision of the General Assembly resulted in leaving the Congolese seat vacant; the displacement of an incumbent was not at issue.

(b) *Dominican Republic*. At the 1207th meeting of the Security Council, held on 13 May 1965, immediately prior to the beginning of its debate on the situation in the Dominican Republic, the Council was faced with competing requests by two persons to be heard as the representative of the Government of the Dominican Republic. One of the competing representatives was the current Permanent Representative of the Dominican Republic to the United Nations, while the other based his authority on a cable signed by the Minister for Foreign Affairs of that country. The Secretary-General submitted a report pursuant to rule 15 of the provisional rules of procedure of the Security Council, in which he stated that he was not in a position to formulate any opinion on the adequacy of the conflicting credentials received. After a lengthy procedural debate, the Council decided to invite both representatives to make statements under rule 39, i.e., as "other persons . . . competent . . . to supply it with information", and not as representatives of a Member State. No competing credentials from the Dominican Republic were submitted to the General Assembly at its subsequent session, so the Assembly never considered the matter.

(c) *Kampuchea*. As in the case of the Congo, the Security Council was the first United Nations organ to be faced with the question of the representation of Kampuchea after the Vietnamese invasion. On 3 January 1979, the Council was requested by the Foreign Minister of Democratic Kampuchea to hold an urgent meeting to consider the situation in that country. The Council received requests from the delegation of Democratic Kampuchea, as well as from the President of the Kampuchean People's Revolutionary Council, for participation in the Council's debate pursuant to Article 31 of the Charter. At the 2108th meeting of the Council, held on 11 January 1979, the debate focused on the two competing requests for participation in the discussion under rule 37 of the provisional rules of procedure of the Council. The Secretary-General was requested to submit a report on the credentials of the two delegations pursuant to rule 15. He stated that the credentials of Democratic Kampuchea were considered in order, on the basis of the approval, at the thirty-third session of the General Assembly, of credentials that had been issued by the same authorities. The Council approved the report of the Secretary-General without a vote and invited the representative of Democratic Kampuchea to participate in the proceedings of the Council.

As indicated, the credentials of the delegation of Democratic Kampuchea had been approved by the General Assembly at its thirty-third session, by its reso-

lution 33/9 A of 3 November 1978. The credentials were not formally challenged at the resumed thirty-third session in 1979, although several delegations reserved their position on the representation of Kampuchea. Consequently, the representatives of Democratic Kampuchea continued to be seated in the Assembly and its Main Committees. At its thirty-fourth session, the General Assembly received credentials issued by Democratic Kampuchea as well as by the People's Republic of Kampuchea. The Credentials Committee met to consider exclusively the credentials of Democratic Kampuchea, which had been challenged by Viet Nam, and recommended their approval by the Assembly. India proposed that, instead of approving the report of the Credentials Committee, the Assembly should suspend its consideration of it and keep the seat of Kampuchea vacant. After some procedural manoeuvres, the Assembly voted first on the recommendation of the Credentials Committee and adopted it, thereby accepting the credentials of the delegation of Democratic Kampuchea for that session. Attempts made at subsequent sessions to introduce an amendment to similar recommendations of the Credentials Committee, which amendments would have excluded the credentials of Democratic Kampuchea from the Assembly's approval of the report of the Credentials Committee, were defeated at each session.

(d) *Afghanistan*. At the first meeting of the Credentials Committee of the fifty-first session of the General Assembly, held on 23 October 1996, the Legal Counsel reported that he had received formal credentials signed by President Rabbani, who had also signed the credentials accepted at the fiftieth session, as well as communications issued by the "Ministry for Foreign Affairs, Kabul, Afghanistan", challenging the legitimacy of those credentials but not submitting credentials for an alternative delegation. The Committee, at its 1st as well as at its 2nd meeting, held on 12 December 1996, deferred a decision on the credentials of Afghanistan. The General Assembly approved the reports of the Credentials Committee by resolutions 51/9 A and B of 29 October and 17 December 1996, respectively. As a result of those decisions and pursuant to rule 29 of the rules of procedure of the General Assembly, the delegates representing the Rabbani Government continue to exercise their rights fully as representatives of Afghanistan unless and until the General Assembly decides otherwise.

(e) *Sierra Leone*. The elected Government of President Ahmad Tejan Kabbah was overthrown on 25 May 1997 in a military coup d'état. The Security Council, in three presidential statements made on 27 May (S/PRST/1997/29), 11 July (S/PRST/1997/36) and 6 August 1997 (S/PRST/1997/42), condemned the military junta, requested it to restore unconditionally the legitimate Government and supported regional and subregional initiatives to put an end to the current situation and restore constitutional order. The Chairman of the "Armed Forces Revolutionary Council and Head of State", Major Johnny Paul Koroma, wrote to the Secretary-General on 6 and 9 June 1997, inter alia, notifying him of the recall of the Permanent Representative and the Deputy Permanent Representative who remained loyal to the Government of President Kabbah. However, the credentials have not been challenged in the General Assembly. In the light of the foregoing statements by the Security Council, the Secretariat did not take any action on the communications from Major Koroma.

#### *Cambodia*

4. Beginning on 5 and 6 July 1997, a number of events took place in Cambodia whose legitimacy under the Cambodian Constitution is questionable. However, although the internal legitimacy of a Government may be a factor taken into

account by States in determining whether to recognize it, the United Nations itself is not in a position to consider the constitutionality of a regime in deciding whether or not to accept persons accredited by it; this is true even if the international community, and indeed the United Nations itself, had a hand in formulating the Constitution, as was indeed the case with Cambodia.

5. The validity of the credentials of the Permanent Representative of Cambodia has not been challenged in the General Assembly, in spite of at least four meetings held since the recent events, including a meeting on 4 August 1997, nor has the question of the credentials of the Cambodian representatives been raised in the Security Council.

6. In recent separate meetings with the Permanent Representative and the Deputy Permanent Representative of Cambodia, we have maintained the line that, in view of the current confused situation in Cambodia, the Secretary-General is not in a position to take account either of the letter sent by the Foreign Minister recalling the Permanent Representative and appointing his Deputy as *Chargé d'affaires a.i.*, or of the letter by Prince Ranariddh, confirming the credentials of the Permanent Representative. We have also advised them that, while awaiting a decision by the General Assembly or an unequivocal indication of the position taken by the international community, no further communications from Cambodian authorities will be published as official documents of the United Nations. However, for the moment, both representatives will continue to be received by the Secretariat.

7. In the light of the foregoing, it is the view of the Office of Legal Affairs that, even if the situation in Cambodia may appear to have been resolved or at least clarified by the turn of events of the past few days, the Secretariat should maintain the line foreseen in the preceding paragraphs, which should be changed only if the General Assembly takes a decision in terms of credentials.

14 August 1997

18. QUESTION WHETHER THE PAN AMERICAN HEALTH ORGANIZATION (PAHO) COULD BE CONSIDERED PART OF THE UNITED NATIONS SYSTEM—AGREEMENT OF 24 MAY 1949 BETWEEN WHO AND PAHO—AGREEMENT OF 23 MAY 1950 BETWEEN THE ORGANIZATION OF AMERICAN STATES AND PAHO

*Letter to the Counsel of the World Bank*

1. This is in response to your two facsimiles dated 6 October 1997 on the above-referenced subject. In your first facsimile, you requested our opinion on whether PAHO would be considered part of the United Nations system. In your second facsimile, you explained your request as follows:

“by reason of a standard form of contract negotiated between the Bank and the United Nations (and also under the Bank’s Consultants’ Guidelines), the Bank accords the United Nations (and its specialized agencies) certain benefits when the United Nations is hired as a consultant under Bank-financed contracts. PAHO claims that it should be accorded these benefits accruing from its relationship with the United Nations . . . However, PAHO’s links/relationships to the United Nations seem not to be so clear-cut.”

2. Your question raises a number of important issues, which would have required the careful review and analysis of the definition of the "United Nations system" in the present context, of the constitutive documents of PAHO and of those establishing its legal relationships with the United Nations and the World Health Organization (WHO). We could not do the careful review and analysis of these issues that we would like, given the urgency you have attached to your request.

3. We had not found, at the time of writing this letter, any express agreement or other formal arrangement between the United Nations and PAHO. Our preliminary opinion on this matter, as set out in paragraph 4 below, is based on the information provided in your facsimiles and our initial review of the relevant provisions of the Basic Documents of WHO and PAHO, in particular the following:

(a) Chapter XI of the Constitution of WHO, which provides that the WHO Assembly may establish regional organizations to meet the special needs of particular areas, that each such regional organization shall be an integral part of WHO and shall consist of a regional committee and a regional office (articles 44-46) and that the Pan American Sanitary Organization<sup>33</sup> shall in due course be integrated with WHO as soon as possible through common action based on mutual consent of the competent authorities expressed through the organizations concerned (art. 54);

(b) The Agreement dated 24 May 1949 concluded between WHO and PAHO, which provides that the Pan American Sanitary Conference and the Pan American Sanitary Bureau, both organs of PAHO, shall serve, respectively, as the Regional Committee and the Regional Office of WHO for the western hemisphere, within the provisions of the Constitution of WHO (art. 2). The Agreement also provides, *inter alia*, that: (i) health and sanitary conventions and programmes adopted or promoted by the Pan American Sanitary Conference must be compatible with the policy and programmes of WHO (art. 3); (ii) the Director of the Pan American Sanitary Bureau serves as Regional Director of WHO and must be appointed in accordance with articles 49 and 59 of the Constitution of WHO (art. 4); and (iii) a portion of the WHO budget shall be allocated to the regional work of PAHO and shall be managed in accordance with the financial policies and procedures of WHO (arts. 6 and 8);

(c) Articles I and II of the Agreement of 23 May 1950 between the Council of the Organization of American States and the Directing Council of PAHO which provide, respectively, that "the Pan American Health Organization is recognized as an inter-American specialized organization" and that "the Pan American Sanitary Organization acts as regional organization of the World Health Organization in the western hemisphere";

(d) Rule 5 of the rules of procedure of the Pan American Sanitary Conference, which provides that "all meetings of the Conference shall at the same time be meetings of the Regional Committee of the World Health Organization, except when the Conference is considering constitutional matters, the juridical relations between the Pan American Health Organization and the World Health Organization or the Organization of American States, or other questions relating to the Pan American Health Organization as an inter-American specialized organization".

4. From the organizational, financial and operational arrangements embodied in the above provisions, we would conclude that PAHO, when acting as the regional organization of WHO, serves as the operational arm of WHO, through which the mandated activities of WHO can be pursued in the region. To

that extent, when PAHO is acting as a regional organization of WHO, we believe that there is sufficient basis for the Bank to grant PAHO the benefits it extends to WHO as an organization of the United Nations system.

16 October 1997

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#### NOTES

<sup>1</sup>*Black's Law Dictionary* described "commercial use" as follows: "... term implies use in connection with or for furtherance of a profit-making enterprise".

<sup>2</sup>The exceptions to this rule are The Business Council for the United Nations and The Foundation for the Support of the United Nations, which have been allowed to use the modified United Nations emblem alone, without their own logos.

<sup>3</sup>As indicated above, entities authorized continuously to use the United Nations emblem must first be authorized to use the United Nations name in their titles, which is allowed only when such inclusion is genuinely descriptive of the entity, i.e., it is established to support the United Nations or certain of its programmes/activities.

<sup>4</sup>The acceptance of voluntary contributions, gifts or donations by the United Nations is governed by United Nations financial rules 107.5 to 107.7, which have been promulgated under financial regulations 7.2 to 7.4. Regulation 7.2 stipulates expressly that "voluntary contributions, whether or not in cash, may be accepted by the Secretary-General provided that the purposes for which the contributions are made are consistent with the policies, aims and activities of the Organization". Rule 107.7 further specifies that "voluntary contributions, gifts or donations which directly or indirectly involve an immediate or ultimate financial liability for the Organization may be accepted only with the approval of the General Assembly".

<sup>5</sup>For this purpose, the consistent practice of the United Nations has been to include in its commercial contracts a standard clause preventing any entity contracting with the United Nations from using the United Nations name (or its abbreviation), emblem or official seal for any purpose, and from advertising or making public the fact that the entity has provided services to the Organization. The aim of such clauses is to prevent public solicitation for business on the basis of connection with the United Nations.

<sup>6</sup>Mr. George Parker, Chief, News Coverage and Accreditation Section, has indicated that the Department of Public Information does not have a policy or particular practice in respect of the issuance of press releases for donors.

<sup>7</sup>The use of the UNICEF name and emblem on UNICEF products for sale, other than the Greeting Card Operation materials, which are analysed below, such as publications, publicity materials or stamps, are considered to be "official" and "non-commercial".

<sup>8</sup>Article 12 of the UNICEF General Conditions for Services reads as follows:

"The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with UNICEF, nor shall the Contractor, in any manner whatsoever, use the name, emblem or official seal of UNICEF or the United Nations, or any abbreviation of the name of UNICEF or the United Nations in connection with its business or otherwise."

<sup>9</sup>UNICEF financial regulation 4.3 reads as follows:

"Contributions to UNICEF may be paid or pledged on an annual basis or for a number of years. They may be pledged to UNICEF at special pledging conferences or in response to a specific request or appeal by the Executive Director or the Secretary-General. They also may be received by UNICEF, unsolicited or as a result of fund-raising activities, through the National Committees for UNICEF and otherwise."

<sup>10</sup>Any contractor involved in the production of the cards and other GCO products does not benefit from the UNICEF name, since the GCO products are sold as "UNICEF materials" and those contractors are prohibited from making public the fact that they are providing



services for UNICEF. On the other hand, National Committees are entitled to retain a percentage of the income raised for UNICEF in order to cover their overhead costs.

<sup>11</sup>Not every country exempts direct donations to UNICEF from tax. For example, the United States does not, but Panama does. National Committees, however, as non-profit organizations, normally enjoy tax-exempt status for donations received by them.

<sup>12</sup>The emblem of National Committees normally includes the UNICEF name and emblem together with the legend "[name of the country] Committee for".

<sup>13</sup>See article VII, paragraph 2, of the UNICEF standard Basic Cooperation Agreement to be concluded with countries which receive UNICEF assistance. Paragraph 2 reads as follows:

"UNICEF may place on the supplies, equipment and other materials intended for programmes of cooperation such markings as are deemed necessary to identify them as being provided by UNICEF."

<sup>14</sup>See, e.g., paragraph 90 of the United Nations Protection Force Notes for the Guidance of Military Observers and Police Monitors, and paragraph 78 of the United Nations Mission in Haiti Notes for the Guidance of United Nations Civil Police on Assignment.

<sup>15</sup>See, e.g., paragraph 92 (c) of the United Nations Protection Force Notes for the Guidance of Military Observers and Police Monitors.

<sup>16</sup>See, e.g., United Nations Protection Force Notes for Guidance of Military Observers and Police Monitors, para. 96, and United Nations Mission in Haiti Notes for Guidance of United Nations Civilian Police on Assignment, para. 84.

<sup>17</sup>Logically the reference should be to staff regulation 1.4, which deals with standards of staff members' conduct. Unfortunately, the text of staff regulation 1.6 with the reference to regulation 1.2 was approved by the General Assembly.

<sup>18</sup>See staff regulations 6.1 and 6.2 and the Regulations of the United Nations Joint Staff Pension Fund. With respect to medical insurance for locally recruited staff, the General Assembly approved at its forty-first session, in accordance with staff regulation 6.2, a Medical Insurance Plan (MIP) for locally recruited staff at designated duty stations away from Headquarters, other than those designated in annex II to the rules governing the Plan (ST/AI/437 of 31 July 1987). We note that the Member State is not listed in annex II.

<sup>19</sup>Exemption from mandatory contribution to national social security schemes has been obtained under, inter alia, the Headquarters Agreements between the United Nations and some Member States. See, e.g., the Headquarters Agreement between the United Nations and the Netherlands for the International Tribunal for the Former Yugoslavia concluded in 1994; the Headquarters Agreement between the United Nations and the Government of Germany for the United Nations Volunteers concluded in 1995; and the Headquarters Agreement between the United Nations and Lebanon for ESCWA concluded in early September 1997. In the case of Switzerland, such exemption was confirmed through an exchange of letters between the Swiss Federal Council and the United Nations in 1994.

<sup>20</sup>This is the level of compensation used in special service agreements.

<sup>21</sup>This is the consistent position of the United Nations on the scope of the term "expert on mission", as set out in more detail in the written statement submitted on behalf of the Secretary-General to the International Court of Justice during the proceedings of the "Mazilu Case". See *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Pleadings, Oral Arguments, Documents, p. 173 et ss., especially pp. 185-188.

<sup>22</sup>See a comprehensive study prepared by the Office of Legal Affairs dated 26 February 1982 entitled "The Secretary-General's role as Chief Administrative Officer of the United Nations" (hereinafter referred to as "1982 Comprehensive Study"); copy available in the Office of Legal Affairs. See also a memorandum of 23 March 1994 from the Legal Counsel to the Chief of Staff concerning the division of responsibilities between the principal organs of the United Nations; copy also available in the Office of Legal Affairs.

<sup>23</sup>An "appropriation section" is a unit with specific purposes for which appropriations were voted by the General Assembly, e.g., peacekeeping operations, Department of Politi-

cal Affairs and legal activities. In this regard, "appropriation sections" generally correspond to departments/offices.

<sup>24</sup>See also a study dated 30 May 1986 prepared by the Management Advisory Service entitled "Evolution of the major units, and Under-Secretary-General and Assistant Secretary-General posts in the United Nations Secretariat"; copy available in the Office of Legal Affairs. Table 3 of the study shows the evolution, up to 1986, of the major units and top-echelon posts of the Secretariat.

<sup>25</sup>The 1992 restructuring was preceded by a restructuring in 1986. That restructuring was begun in response to General Assembly resolution 41/213 of 19 December 1986. By that resolution, the General Assembly had endorsed the recommendations contained in the report of the Group of High-Level Intergovernmental Experts to review the efficiency of the administrative and financial functioning of the United Nations (*Official Records of the General Assembly, Forty-first Session, Supplement No. 49 (A/41/49)*), and the Assembly requested the Secretary-General to implement the recommendations contained therein in the light of the findings of the Fifth Committee and subject to a number of clarifications concerning several recommendations. Recommendation 15 of the report proposed, inter alia, a 15 per cent reduction of the overall number of regular budget posts within a period of three years. A final report on the implementation of resolution 41/213 is contained in the report of the Secretary-General to the General Assembly (A/44/222) of 26 April 1989.

<sup>26</sup>In the view of the Office of Legal Affairs, bulletin ST/SGB/249 represents an example of an inappropriate use of bulletins. An information circular is the appropriate medium for such announcement.

<sup>27</sup>In March 1995, the Legal Counsel proposed that this bulletin should be replaced by a modernized bulletin. This was endorsed by Secretary-General Boutros-Ghali, but no action was taken. The reform is absolutely necessary and the Office of Legal Affairs has now taken the initiative at the Secretary-General's request. A draft of a new bulletin on administrative issuances was circulated to members of the Steering Committee for Reform on 9 April 1997.

<sup>28</sup>This document was published without consultation with the Office of Legal Affairs. It is framed in the same manner as was severely criticized by the Office of Legal Affairs in its March 1995 proposal and in a subsequent memorandum of 13 October 1995. The Office would have advised against the Secretary-General's approval. The publication represents an ex post facto issuance which does not fulfil the requirements of a document promulgating legal norms.

<sup>29</sup>This example shows that the Manual in its present form is ineffective as an instrument for the establishment of "the organizational structure of the Secretariat" (see para. 19 above). It is a meaningless bureaucratic burden on the Organization.

<sup>30</sup>We note that the actions taken by Secretary-General Boutros-Ghali in the 1992 restructuring suggest that the authority of the Secretary-General vis-à-vis the General Assembly has, in practice, been asserted with more determination in comparison to what was indicated in the 1982 Comprehensive Study.

<sup>31</sup>In this regard, the apparent notion that it is improper for the Secretary-General to defend vigorously a proposed programme budget in the Fifth Committee (see the 1982 Comprehensive Study, para. 26 (b)-(c)) is, in the view of the Office of Legal Affairs, not acceptable. The Secretary-General and his representatives have the duty to defend the proposed programme budget unless, of course, the Secretary-General has changed his mind. It is another matter that the decision on the budget lies with the Fifth Committee and the General Assembly. General principles for division of power between a legislature and an executive indicate, however, that it is not appropriate for the Advisory Committee and the Fifth Committee to make decisions that are so detailed that they may encroach on the Secretary-General's fundamental authority under Articles 97 and 101 of the Charter.

<sup>32</sup>In this context we must indicate that I question the utility of the medium-term plan, which is required by article III of the PPBME Rules, and suggest that it be reconsidered. The two-year budget is sufficient for planning purposes. There is nothing to prevent the Secretary-General from "looking further ahead" in the budget proposal if he so wishes. The present

restructuring of the Secretariat will require *not only* a revised budget for the biennium 1996-1997 *and* a revised budget for the biennium 1998-1999. If the rules are properly applied, the reform *would also require* adjustments to the medium-term plan for 1998-2001 (and maybe also to the current plan for 1994-1997). What purpose do these extraordinary bureaucratic requirements serve?

<sup>33</sup>Renamed "Pan American Health Organization" by decision of the XVth Pan American Sanitary Conference in September-October 1958.



### **Part Three**

## **JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS**



## Chapter VII

### DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

#### International Tribunal for the Law of the Sea

##### THE M/V "SAIGA" (NO. 1) CASE (SAINT VINCENT AND THE GRENADINES V. GUINEA)

*Jurisdiction of the State over the exclusive economic zone—Article 73, paragraph 2, of the United Nations Convention on the Law of the Sea—Right of hot pursuit in accordance with article 111 of the Convention*

THE TRIBUNAL,  
after deliberation,  
*delivers the following judgment:*

1. On 13 November 1997, the Agent of Saint Vincent and the Grenadines filed in the Registry of the Tribunal by facsimile an Application under article 292 of the United Nations Convention on the Law of the Sea (hereinafter the Convention) instituting proceedings against Guinea in respect of a dispute concerning the prompt release of the M/V "Saiga" and its crew.

2. Pursuant to article 24, paragraph 2, of the Statute of the Tribunal and to article 52, paragraph 2 (a), and article 111, paragraph 4, of the Rules of the Tribunal, a certified copy of the Application was sent by special courier the same day by the Registrar of the Tribunal to the Minister for Foreign Affairs of Guinea, Conakry, and also in care of the Ambassador of Guinea to Germany.

3. In accordance with article 24, paragraph 3, of the Statute of the Tribunal, States Parties to the Convention were notified of the Application by a note verbale from the Registrar dated 19 November 1997, inter alia, through Permanent Representatives to the United Nations.

4. The Application was entered in the list of cases under No. 1 and named the M/V "Saiga".

5. The Application of Saint Vincent and the Grenadines included a request for the submission of the case to the Chamber of Summary Procedure. Guinea was duly notified by the Registrar in a note verbale dated 13 November 1997. Guinea did not notify the Tribunal of its concurrence with the request within the time limit provided for in article 112, paragraph 2, of the Rules of the Tribunal.

6. In accordance with article 112, paragraph 3, of the Rules of the Tribunal, the President of the Tribunal, by an Order dated 13 November 1997, fixed 21 November 1997 as the date for the opening of the hearing with respect to the Application, notice of which was communicated to the parties.

7. The original copy of the Application and documents in support were subsequently submitted by the Agent of Saint Vincent and the Grenadines in accordance with paragraph 10 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal.

8. By letter dated 20 November 1997 transmitted by facsimile the same day, the Minister of Justice of Guinea requested a postponement of the hearing on account of difficulties in the receipt of certain documentation.

9. In accordance with article 45 of the Rules of the Tribunal, the President of the Tribunal consulted the parties and ascertained their views with regard to the hearing.

10. Prior to the opening of the hearing, on 20 November 1997, the Tribunal held its initial deliberations in accordance with article 68 of the Rules of the Tribunal.

11. On 21 November 1997, the Tribunal opened the hearing at a public sitting at the City Hall in the Free and Hanseatic City of Hamburg and, by an Order of the same date, postponed the continuation of the hearing until 27 November 1997.

12. By letter dated 21 November 1997, the Registrar transmitted the said Order to the parties and informed the Minister for Foreign Affairs of Guinea that the Statement in response of Guinea, consistent with article 111, paragraph 4, of the Rules of the Tribunal, could be filed in the Registry not later than 24 hours before the date fixed for continuation of the hearing.

13. On 26 November 1997, Guinea transmitted by facsimile to the Tribunal its Statement in response. The same day, the Registrar sent a certified copy of the Statement in response to the Agent of Saint Vincent and the Grenadines. The original was filed in the Registry on 27 November 1997.

14. At two meetings with the representatives of the parties held on 26 and 27 November 1997, the President of the Tribunal ascertained the views of the parties as regards the procedure for the hearing and the presentation by each of the parties. The Agent of Saint Vincent and the Grenadines informed the President of its intention to call witnesses at the hearing. Pursuant to article 72 of the Rules of the Tribunal, information regarding those witnesses was transmitted to the Registrar on 26 and 27 November 1997.

15. On 26 and 27 November 1997, prior to the public sitting on 27 November 1997, additional written statements were filed in the Registry by the Agents of Saint Vincent and the Grenadines and of Guinea. The Registrar forthwith transmitted those statements to the other party.

16. At two public sittings held on 27 and 28 November 1997, the Tribunal was addressed by the following representatives of the parties:

*For Saint Vincent and  
the Grenadines:*  
Mr. Nicholas Howe,  
Mr. Yérin Thiam.

*For Guinea:*  
Mr. Hartmut von Brevern,  
Mr. Barry Alpha Oumar,  
Capt. Ibrahim Khalil Camara,  
Mr. Mamadi Askia Camara.

17. At the public sitting held on 27 November 1997, the following witnesses were called by Saint Vincent and the Grenadines and gave evidence:

Mr. Sergey Klyuyev, Second Officer of the M/V "Saiga" (examined by Mr. Thiam);  
Mr. Mark Vervae, ORYX Senegal S.A. (examined by Mr. Thiam).



A question was put by Mr. Barry Alpha Oumar to Mr. Vervaet, who replied orally.

18. At the public sitting held on 27 November 1997, a map showing areas off the coast of Guinea was projected and commented on by the Agent of Saint Vincent and the Grenadines; a composite photograph of injured crew members of the M/V "Saiga" was also shown.

19. At a meeting held on 28 November 1997, the President of the Tribunal informed the Agents of the parties of the points or issues which the Tribunal would like the parties specially to address, in accordance with article 76 of the Rules of the Tribunal.

20. At the public sitting held on 28 November 1997, in replying to the first oral arguments made by each party on 27 November 1997, the parties also addressed the questions raised with the Agents of the parties by the President of the Tribunal. When doing so, the Agent of Saint Vincent and the Grenadines made reference to a map produced by him.

21. The presence of Their Excellencies Mr. Maurice Zogbélemou Togba, Minister of Justice of Guinea, Mr. Lamine Bolivogui, Ambassador of Guinea to Germany, and Mr. Lothar Golgert, Honorary Consul-General of Guinea in Hamburg, at the hearing and at consultations with the President of the Tribunal and the Registrar was noted.

22. Pursuant to article 67, paragraph 2, of the Rules of the Tribunal, copies of the Application and the Statement in response and documents annexed thereto were made accessible to the public from the date of opening of the oral proceedings.

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23. In the Application and in the Statement in response, the following submissions were presented by the parties:

*On behalf of Saint Vincent and the Grenadines, in the Application:*

"The Applicant submits that the Tribunal should determine that the vessel, her cargo and crew be released immediately without requiring that any bond be provided. The Applicant is prepared to provide any security reasonably imposed by the Tribunal to the Tribunal itself, but in view of the foregoing seeks that the Tribunal do not determine that any security be provided directly to Guinea."

*On behalf of Guinea, in the Statement in response:*

"Guinea committed no illegal act and no violation of the procedure; it sought and is still seeking to protect its rights. This is why it is requesting that it may please the Tribunal to dismiss the Applicant's action."

24. In their further statements, the following submissions and arguments were presented by the parties:

*On behalf of Saint Vincent and the Grenadines:*

"The Tribunal will be aware that under the Convention a coastal State is entitled to exercise limited and specific rights as a sovereign within its exclusive economic zone as prescribed in the Convention and in particular article 56 thereof. In this matter it is submitted that the Respondent has erred in two respects:

"First, insofar as the Respondent may have jurisdiction over the 'Saiga' pursuant to the provisions of the Convention, that it has failed to comply with the relevant provisions for the prompt release of the vessel and her crew upon the posting of a reasonable bond or other financial security;

"Second, that the Respondent has wrongly purported to exercise sovereign jurisdiction within its exclusive economic zone beyond what is permitted by the Convention with the effect that it has interfered with the rights of others in its exclusive economic zone, including those of the 'Saiga' flying the flag of the Applicant.

"It is therefore submitted that the Tribunal may determine that the Respondent has failed to comply with the provisions of article 73, paragraph 2, of the Convention by not promptly releasing the 'Saiga' and her crew upon the posting of a reasonable bond or other security, no such reasonable bond or other security having even been sought.

"It is further submitted that the Tribunal may determine the amount, nature and form of bond or financial security to be posted for the release of the 'Saiga' and her crew . . . In this regard it is submitted that it is also within the jurisdiction of the Tribunal to order that the 'Saiga' be returned to her original state, that is with a cargo of gasoil on board, at the tune of her prompt release and before any further bond or financial security is to be provided to secure her release."

*On behalf of Guinea:*

"Messrs. Stephenson Harwood are not authorized according to article 110, paragraph 2, of the Rules of the Tribunal.

"It is doubtful whether Tabona Shipping Company Ltd. is the owner of the M/V 'Saiga'.

"Article 73 of the Convention does not apply and there was no violation of this article by the Government of Guinea.

"Article 292 does not apply. The claimant has not alleged that the Government of Guinea has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security. It is our understanding that article 292 only applies if for and on behalf of the State party whose vessel has been detained, or on behalf of the owner of the vessel, a reasonable bond or other financial security has been posted or at least has been offered to the detaining State party. No security or bond has been offered on behalf of the M/V 'Saiga'.

"Article 292 of the Convention furthermore is not applicable, because the reference of the claimants as to article 73 of the Convention, which the detaining State allegedly has not complied with, is not an allegation in conformity with article 292. Article 73, paragraph 2, in conformity with article 292, paragraph 1, orders the prompt release of an arrested vessel and their crews only upon the posting of reasonable bond or other security. None has been posted by or on behalf of the M/V 'Saiga'.

"If the Tribunal contrary to our opinion would answer its competence in the affirmative, then the Tribunal . . . should determine that the allegation made by the Applicant is not well founded. When arresting the M/V 'Saiga'

outside the Guinean waters, the Government of Guinea made use of the right under article 111 of the Convention, namely the right of hot pursuit."

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25. The events leading up to the present proceedings are as follows.

26. The M/V "Saiga" is an oil tanker flying the flag of Saint Vincent and the Grenadines. Its charterer at the relevant time was Lemanía Shipping Group Ltd., registered in Geneva.

27. The certified extracts of the log book of the M/V "Saiga" were produced by Guinea and the entries therein were not contested by either party.

28. At the time of the incident with respect to which the Application is based, the M/V "Saiga" served as a bunkering vessel supplying fuel oil to fishing vessels and other vessels operating off the coast of Guinea.

29. In the early morning of 27 October 1997, the M/V "Saiga", having crossed the maritime boundary between Guinea and Guinea-Bissau, entered the exclusive economic zone of Guinea approximately 32 nautical miles from the Guinean island of Alcatraz. The same day, at the point 10°25'03" N and 15°42'06" W, between approximately 0400 and 1400 hours, it supplied gasoil to three fishing vessels, the *Giuseppe Primo*, the *Kriti* and the *Eleni S.*

30. On 28 October 1997, the M/V "Saiga" was arrested by Guinean Customs patrol boats. The arrest took place at a point south of the maritime boundary of the exclusive economic zone of Guinea. In the course of action, at least two crew members were injured. On the same day the vessel was brought into Conakry, where the vessel and its crew were detained. Subsequently, two injured crew members were allowed to leave and the cargo was discharged in Conakry upon the orders of local authorities.

31. No bond or other financial security was requested by Guinean authorities for the release of the vessel and its crew or offered by Saint Vincent and the Grenadines. It was then that Saint Vincent and the Grenadines instituted the present proceedings under article 292 of the Convention.

32. An account of the facts relating to the arrest of the M/V "Saiga" and the charges against it was recorded by Guinean Customs authorities in a formal document headed "Procès-Verbal" bearing the designation "PV29" (hereinafter PV29). PV29 contains a statement obtained by interrogation by the Guinean authorities of the captain of the M/V "Saiga".

33. In the course of the oral proceedings, the Tribunal was informed by the Agents of the parties that some of the crew members had left Guinea, that others remained on board and that the captain of the M/V "Saiga" was still detained.

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34. The statements of facts and the legal grounds presented by Saint Vincent and the Grenadines and Guinea in their written statements can be summarized as follows.

35. Saint Vincent and the Grenadines stated that the M/V "Saiga" did not enter the territorial waters of Guinea and that on 28 October 1997, from 0800 hours, it was drifting at 09°00' N and 14°59' W in the exclusive economic zone of

Sierra Leone when it was attacked at about 0911 hours by two Customs patrol boats of Guinea. Saint Vincent and the Grenadines alleged that the Guinean authorities had no jurisdiction to take such action, that Guinea failed to notify the flag State of reasons for the detention and that Guinea did not comply with article 73, paragraph 2, of the Convention according to which "arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security". According to the information contained in the Application, the owner of the M/V "Saiga" is Tabona Shipping Co. Ltd. c/o Seascot Shipmanagement Ltd., Glasgow, Scotland. The vessel is insured for a value of approximately 1.5 million United States dollars and was carrying a cargo of approximately 5,000 tons of gasoil of a value of approximately US\$ 1 million.

36. Guinea contended that the Application had not been submitted in conformity with article 110 of the Rules of the Tribunal and that article 292 of the Convention was not applicable to the case. Guinea stated that the M/V "Saiga" was involved in smuggling, an offence under the Customs Code of Guinea, and that the detention had taken place after the exercise by Guinea of the right of hot pursuit in accordance with article 111 of the Convention. In this respect, it was alleged that the Guinean authorities had ordered the M/V "Saiga" to stop on 28 October 1997 at about 0400 hours, that the Guinean patrol boats started their pursuit at the point 09°22' N and 13°56'03" W and that the M/V "Saiga" was brought under control at the point 08°58' N and 14°50' W. Guinea questioned also the identity of the real owner of the vessel.

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37. The Tribunal will commence by considering the question of its jurisdiction under article 292 of the Convention to entertain the Application. Article 292 of the Convention reads as follows:

#### *Article 292*

##### PROMPT RELEASE OF VESSELS AND CREWS

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

38. In order to establish that the Tribunal has jurisdiction, it is necessary to verify certain conditions.

39. In this regard, the Tribunal first notes that Saint Vincent and the Grenadines and Guinea are both States parties to the Convention. Saint Vincent and the Grenadines ratified the Convention on 1 October 1993 and Guinea ratified the Convention on 6 September 1985. The Convention entered into force for Saint Vincent and the Grenadines and Guinea on 16 November 1994.

40. Article 292 of the Convention requires that an application may be submitted to the Tribunal failing agreement of the parties to submit the question of release from detention to another court or tribunal within 10 days from the time of the detention.

41. The detention of the M/V "Saiga" and its crew commenced on 28 October 1997. On 11 November 1997, a letter was sent by facsimile to the Minister for Foreign Affairs of Guinea by Stephenson Harwood, Solicitors. In this letter, Stephenson Harwood informed the Minister for Foreign Affairs of Guinea that they had received "authority from the Commissioner for Maritime Affairs of Saint Vincent and the Grenadines to proceed against the Government of Guinea before the International Tribunal for the Law of the Sea" and invited him "to secure the release of the vessel and crew . . . immediately".

42. No reply was given to the above-mentioned letter and no agreement was reached between the parties to submit the question of the release to another court or tribunal. The Tribunal finds therefore that the Application has met the requirement mentioned in paragraph 40 above.

43. Guinea maintains that the Agent of Saint Vincent and the Grenadines was not authorized in accordance with article 110, paragraph 2, of the Rules of the Tribunal, and questions the identity of the owner of the vessel.

44. Pursuant to article 110 of the Rules of the Tribunal, an application for prompt release of a vessel and its crew may be made by or on behalf of the flag State of the vessel. In this regard, the Tribunal notes that, on 18 November 1997, a certified copy of the authorization of the Attorney General of Saint Vincent and the Grenadines on behalf of the Government of Saint Vincent and the Grenadines to the Commissioner for Maritime Affairs of Saint Vincent and the Grenadines and the original of the authorization of the Commissioner for Maritime Affairs to the Agent were submitted to the Registrar and form part of the record. The Tribunal therefore dismisses the objection of Guinea. As far as the ownership of the vessel is concerned, the Tribunal notes that this question is not a matter for its deliberation under article 292 of the Convention and that Guinea did not contest that Saint Vincent and the Grenadines is the flag State of the vessel.

45. For the above reasons, the Tribunal finds that it has jurisdiction under article 292 of the Convention to entertain the Application.

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46. Having dealt above with the question of the jurisdiction to entertain the Application, the main issue to be resolved by the Tribunal is whether the Applica-

tion is admissible, that is, whether it falls within the scope of the other requirements set out in article 292 of the Convention.

47. The proceedings for prompt release of vessels and crews are characterized by the requirement, set out in article 292, paragraph 3, of the Convention that they must be conducted and concluded "without delay" and by the nature of their relationship to domestic proceedings and other international proceedings.

48. The Rules of the Tribunal give effect, in various ways, to the provision mentioned above that applications for release must be dealt with without delay. Article 112, paragraph 1, provides that the Tribunal give priority to applications for prompt release over all other proceedings before the Tribunal. Article 112, paragraph 3, provides for the setting of the earliest possible date for an oral hearing, but not exceeding 10 days from the receipt of the application. The same paragraph sets out the general rule that the oral hearing shall last no longer than one day for each party. Article 112, paragraph 4, provides that the judgment of the Tribunal shall be adopted as soon as possible and read at a sitting to be held not later than 10 days after the closure of the oral hearing.

49. As regards the relationship of the proceedings under article 292 of the Convention to domestic proceedings, article 292, paragraph 3, states that the prompt release proceedings shall be "without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew". This provision should be read together with the provision of the same paragraph stating that the Tribunal "shall deal only with the question of release" and with the provision of paragraph 4 according to which "upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew". Consequently, this provision means that, while the States which are parties to the proceedings before the Tribunal are bound by the judgment adopted by it as far as the release of the vessel and the bond or other security are concerned, their domestic courts, in considering the merits of the case, are not bound by any findings of fact or law that the Tribunal may have made in order to reach its conclusions.

50. The independence of proceedings under article 292 of the Convention vis-à-vis other international proceedings emerges from article 292 itself and from the Rules of the Tribunal. The Rules deal with the proceedings for the prompt release of vessels and crews in a separate section (section E of Part III). These proceedings are thus not incidental to proceedings on the merits as are the proceedings for interim measures set out in article 290 which in the Rules are dealt with in section C of Part III, on "incidental proceedings". They are separate, independent proceedings. It cannot, however, be excluded that a case concerning the merits of the situation that led to the arrest of the M/V "Saiga" could later be submitted for a decision on the merits to the Tribunal or to another court or tribunal competent according to article 287 of the Convention. In the view of the Tribunal, this circumstance does not preclude it from considering the aspects of the merits it deems necessary in order to reach its decision on the question of release, but it does require that the Tribunal do so with restraint.

51. The possibility that the merits of the case may be submitted to an international court or tribunal, and the accelerated nature of the prompt release proceedings, considered above, are not without consequence as regards the standard of appreciation by the Tribunal of the allegations of the parties. The Tribunal in this regard considers appropriate an approach based on assessing whether the al-

legations made are arguable or are of a sufficiently plausible character in the sense that the Tribunal may rely upon them for the present purposes. By applying such a standard the Tribunal does not foreclose that if a case were presented to it requiring full examination of the merits it would reach a different conclusion. The standard indicated seems particularly appropriate in view of the fact that, in the proceedings under article 292, the Tribunal has to evaluate "allegations" by the applicant that given provisions of the Convention are involved and objections by the detaining State based upon its own characterization of the rules of law on the basis of which it has acted. It is clear to the Tribunal that it cannot base itself solely in this connection on the characterizations given by the parties. It can be added that applying such standard allows the Tribunal in the short time available to exercise the restraint referred to in paragraph 50 above.

52. As regards the requirement of alleged non-compliance with the provisions of the Convention for the prompt release of vessels upon the posting of a reasonable bond or other financial security, three provisions of the Convention correspond expressly to this description: article 73, paragraph 2; article 220, paragraphs 6 and 7; and, at least to a certain extent, article 226, paragraph 1 (c).

53. Saint Vincent and the Grenadines, in relying upon article 292 of the Convention, refers to articles 73, 220 and 226. As an alternative, Saint Vincent and the Grenadines also relies on what could be termed a non-restrictive interpretation of article 292. According to this interpretation the applicability of article 292 to the arrest of a vessel in contravention of international law can also be argued, without reference to a specific provision of the Convention for the prompt release of vessels or their crews. Contravention of article 56, paragraph 2, of the Convention has been quoted in this respect by Saint Vincent and the Grenadines. In the view of Saint Vincent and the Grenadines, it would be strange that the procedure for prompt release should be available in cases in which detention is permitted by the Convention (articles 73, 220 and 226) and not in cases in which it is not permitted by it.

54. Guinea argues that the reference made by the Saint Vincent and the Grenadines to article 73 of the Convention is unfounded because a bond has not been posted and that article 292 is not applicable to the case which, in its opinion, concerns smuggling. Guinea in its oral statements argues that the arrest of the M/V "Saiga" was legitimate as it was executed at the conclusion of hot pursuit following a violation of customs laws in the contiguous zone of Guinea.

55. Saint Vincent and the Grenadines has not pursued its arguments concerning the applicability of articles 220 and 226 of the Convention. It remains therefore to consider the question of the applicability of article 73. Article 73 reads as follows:

### *Article 73*

#### ENFORCEMENT OF LAWS AND REGULATIONS OF THE COASTAL STATE

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

56. In the light of article 73 of the Convention and the contentions of Saint Vincent and the Grenadines, the question to be considered can be stated as follows: Is "bunkering" (refuelling) of a fishing vessel within the exclusive economic zone of a State to be considered as an activity the regulation of which falls within the scope of the exercise by the coastal State of its "sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone"? If this were the case, violation of a coastal State's rules concerning such bunkering would amount to a violation of the laws and regulations adopted for the regulation of fisheries and other activities concerning living resources in the exclusive economic zone. The arrest of a vessel and crew allegedly violating such rules would fall within the scope of article 73, paragraph 1, of the Convention and the prompt release of the vessel and crew upon the posting of a reasonable bond or other security would be an obligation of the coastal State under article 73, paragraph 2. In case such prompt release is not effected by the coastal State, article 292 could be invoked.

57. Arguments can be advanced to support the qualification of "bunkering of fishing vessels" as an activity the regulation of which can be assimilated to the regulation of the exercise by the coastal State of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone. It can be argued that refuelling is by nature an activity ancillary to that of the refuelled ship. Some examples of State practice can be noted. Article 1 of the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific of 23 November 1989 defines "driftnet fishing activities" as, *inter alia*, "transporting, trans-shipping and processing any driftnet catch, and cooperation in the provision of food, *fuel* and other supplies for vessels equipped for or engaged in driftnet fishing" (emphasis added). As documented by Saint Vincent and the Grenadines, Guinea-Bissau, in its decree-law No. 4/94 of 2 August 1994, requires authorization of the Ministry of Fishing for operations "connected" with fishing and Sierra Leone and Morocco routinely authorize fishing vessels to be refuelled offshore.

58. Arguments can also be advanced, even though Guinea did not address this issue, in support of the opposite view that bunkering at sea should be classified as an independent activity whose legal regime should be that of the freedom of navigation (or perhaps, when conducted in the exclusive economic zone, that mentioned in article 59 of the Convention). The position of States with exclusive economic zones which have not adopted rules concerning bunkering of fishing vessels might be construed as indicating that such States do not regard bunkering of fishing vessels as connected to fishing activities. In support of this view it could also be argued that bunkering is not included in the list of the matters to which laws and regulations of the coastal State may, *inter alia*, relate according to article 62, paragraph 4, of the Convention.



59. It is not necessary for the Tribunal to come to a conclusion as to which of these two approaches is better founded in law. For the purpose of the admissibility of the application for prompt release of the M/V "Saiga", it is sufficient to note that non-compliance with article 73, paragraph 2, of the Convention has been "alleged" and to conclude that the allegation is arguable or sufficiently plausible.

60. However, Guinea holds the view that the arrest of the M/V "Saiga" was in conformity with international law and that its release cannot be claimed on the basis of article 292 of the Convention. According to Guinea: (a) the bunkering must be qualified as an infringement of its customs legislation; (b) the bunkering took place in its contiguous zone (less than 24 nautical miles from the island of Alcatraz); and (c) the arrest was justified because it was effected following the exercise of the right of hot pursuit according to article 111 of the Convention.

61. The allegation based on the right of hot pursuit does not meet the same requirements of arguability (or of being of a sufficiently plausible character) as the contention considered above. While the coordinates of the position of the M/V "Saiga" at the time of the bunkering of the fishing vessels the *Giuseppe Prima*, the *Kriti* and the *Eleni S.* in the logbook of the M/V "Saiga" and the examination of the relevant maps suggest that the bunkering was in all likelihood carried out within the contiguous zone of Guinea, the arguments put forward in order to support the existence of the requirements for hot pursuit and, consequently, for justifying the arrest, are not tenable, even *prima facie*. Suffice it to say that according to PV29, the *procès-verbal* of the Guinean authorities, the first viewing of the M/V "Saiga" by the Guinean patrol boats was by radar at 0400 hours on 28 October 1997, while the bunkering was carried out, according to the logbook, between 0400 and 1350 hours on 27 October 1997. In PV29, as well as in its Statement of response, Guinea thus recognizes that the pursuit was commenced one day after the alleged violation, at a time when the M/V "Saiga" was certainly not within the contiguous zone of Guinea, as shown in the vessel's logbook.

62. However, the Tribunal is not called upon to decide whether the arrest of the M/V "Saiga" was legitimate. It is called upon to determine whether the detention consequent to the arrest is in violation of a provision of the Convention "for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security".

63. It has already been indicated that laws or regulations on bunkering of fishing vessels may arguably be classified as laws or regulations on activities within the scope of the exercise by the coastal State of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone. The question now to be addressed is the following: Are there such laws and regulations in Guinea and, if so, is it relevant that Guinea qualifies them as "customs" or "smuggling" regulations? The main provisions that are relevant in this connection are those upon which the authorities of the detaining State relied at the time of arrest. It emerges from PV29 that the captain of the M/V "Saiga" is accused of a violation of article 40 of the Maritime Code and Law 94/007/CTRM of 25 March 1994, which prohibits unauthorized import, transport and distribution of fuel in the Republic of Guinea (article 1).

64. The notion that bunkering is seen as an activity ancillary to fishing and connected thereto is not unknown in the law of Guinea. Article 4 of Law 94/007/CTRM specifically makes it an offence for the owners of fishing boats holding a fishing licence issued by the Guinean Government to refuel or attempt to refuel by means other than those legally authorized. The Guinean Law 95/13/CTRM

of 15 May 1995 (Code of Maritime Fishing, published in the *Journal officiel de la République de Guinée* dated 10 June 1995) provides that the definition of "fishing" includes "operations connected to fishing" (art. 3, para. 1), which are defined as including, inter alia, "the supplying of fishing vessels or any other activity of logistical support of fishing vessels at sea" (art. 3, para. 1 (c)). Article 60, paragraph 1 (k), defines as "fishing violations" violations of rules concerning operations connected to fishing. Article 29 states that "operations connected to fishing" are subject to licence. As article 5 of Law 94/007/CTRM refers to a "licence for the supply of fuel other than that provided for in article 30 [now article 29] of the Code of Maritime Fishing", there is no doubt that the licence mentioned in article 29 may include the supply of fuel. Moreover, several provisions of Order No. 039 PRG/85 of 23 February 1985, General Regulations for the Implementation of the Maritime Fisheries Code of Guinea, mention operations for the "logistical support" of fishing (art. 2, sect. 1 (c) and sect. 7; art. 4, sect. 2 (c)) and subject them to authorization (art. 12).

65. From the pleadings and documents submitted by Guinea there also emerge indications that the violation of which the M/V "Saiga" was accused was seen as a violation concerning its rights in the exclusive economic zone.

66. Repeatedly, Guinea relies in its pleadings on article 40 of its Maritime Code, which defines Guinea's rights in the exclusive economic zone along the lines of article 56 of the Convention. Article 73 is part of a group of provisions of the Convention (articles 61 to 73) which develop in detail the rule in article 56 as far as sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources of the exclusive economic zone are concerned. In the context of a violation concerning the bunkering of fishing vessels, a reference to article 40 of the Guinean Maritime Code, in view of its textual correspondence with article 56 of the Convention, must be read as dealing with the matters covered by article 73 of the Convention.

67. In this connection it should be recalled that Guinea, in rejecting in its pleadings the argument of Saint Vincent and the Grenadines that article 73 applies, does not challenge directly the applicability of article 73 but rather confines itself to the argument that a bond had not been posted or offered.

68. PV29 includes article 40 of the Maritime Code among the provisions which the captain of the M/V "Saiga" is accused of violating. How could this indication be relevant unless it meant that the violations of the substantive provisions listed afterwards are violations that are such when committed in the exclusive economic zone, and, consequently, relate to matters concerning the rights and jurisdiction of the coastal State in such zone? Moreover, PV29 begins by referring to information received by the Guinean patrol boat on the "illicit presence of a tanker in the exclusive economic zone of [Guinean] waters". How could the presence of a tanker in the exclusive economic zone be seen as illicit were it not for suspected violation of the sovereign rights and jurisdiction of Guinea in the exclusive economic zone?

69. Of the several matters encompassed in the sovereign rights and jurisdiction of Guinea in the exclusive economic zone to which article 40 of the Maritime Code refers through its connection with article 56 of the Convention, "sovereign rights to explore, exploit, conserve and manage the living resources" as mentioned in article 73 are the only ones that can be relevant in the present case in the light of the Guinean legislation referred to in paragraph 64 above and of the fact that it was fishing vessels that the M/V "Saiga" refuelled.

70. The allegation that the infringement by the M/V "Saiga" took place in the contiguous zone and that the vessel was captured legitimately after hot pursuit in accordance with article 111, paragraph 1, of the Convention was advanced by Guinea only at the final stage of oral proceedings. This makes the classification of the laws allegedly violated as relating to "customs" or "smuggling" rather doubtful. From the point of view of facts, the only indication that the bunkering of the fishing vessels took place in the contiguous zone is the position given in the log-book of the M/V "Saiga" that became known to the Guinean authorities after, and not before, the arrest of the vessel. As late as in its Statement in response, Guinea indicated that the alleged infringement took place in its exclusive economic zone. As the position of the bunkering is close to the 24-nautical-mile limit measured from the low-water line of the island of Alcatraz, only a very accurate observation could have established that the bunkering took place in the contiguous zone. There is no evidence of such observation.

71. In the light of the independent character of the proceedings for the prompt release of vessels and crews, when adopting its classification of the laws of the detaining State, the Tribunal is not bound by the classification given by such State. The Tribunal can, on the basis of the arguments developed above, conclude that, for the purposes of the present proceedings, the action of Guinea can be seen within the framework of article 73 of the Convention.

72. Why does the Tribunal prefer the classification connecting these laws to article 73 of the Convention to that put forward by the detaining State? The answer to this question is that the classification as "customs" of the prohibition of bunkering of fishing vessels makes it very arguable that, in view of the facts referred to in paragraphs 61 and 70 above, the Guinean authorities acted from the beginning in violation of international law, while the classification under article 73 permits the assumption that Guinea was convinced that in arresting the M/V "Saiga" it was acting within its rights under the Convention. It is the opinion of the Tribunal that given the choice between a legal classification that implies a violation of international law and one that avoids such implication it must opt for the latter.

73. Having decided that the argument of Saint Vincent and the Grenadines based on article 73 of the Convention is well founded, it is unnecessary for the Tribunal to adopt a position on the non-restrictive interpretation of article 292 of the Convention referred to in paragraph 53 above.

74. As a subsidiary argument, Guinea claims that it arrested the vessel in compliance with Security Council resolution 1132 (1997) of 8 October 1997. In paragraph 6 of that resolution, the Security Council decided "that all States shall prevent the sale or supply to Sierra Leone, by their nationals or from their territories, or using their flag vessels or aircraft, of petroleum or petroleum products and arms and related materials of all types". According to Guinea, the M/V "Saiga" "hid in Sierra Leone waters" when pursued by the Guinean vessels for alleged infringements of Guinean law in Guinean waters (pleading of 27 November 1997). It does not, therefore, seem tenable that the purpose of Guinea was to prevent the M/V "Saiga" from performing illicit activities in Sierra Leone.

75. It remains for the Tribunal to consider the submission of Guinea that article 73 of the Convention cannot form a basis for the application because a bond or other security has not been offered or posted.

76. According to article 292 of the Convention, the posting of the bond or security is a requirement of the provisions of the Convention whose infringement

makes the procedure of article 292 applicable, and not a requirement for such applicability. In other words, in order to invoke article 292, the posting of the bond or other security may not have been effected in fact, even when provided for in the provision of the Convention the infringement of which is the basis for the application.

77. There may be an infringement of article 73, paragraph 2, of the Convention even when no bond has been posted. The requirement of promptness has a value in itself and may prevail when the posting of the bond has not been possible, has been rejected or is not provided for in the coastal State's laws or when it is alleged that the required bond is unreasonable.

78. In the case under consideration Guinea has not notified the detention as provided for in article 73, paragraph 4, of the Convention. Guinea has refused to discuss the question of bond and the 10-day time limit relevant for the application for prompt release has elapsed without the indication of willingness to consider the question. In the circumstances, it does not seem possible to the Tribunal to hold Saint Vincent and the Grenadines responsible for the fact that a bond has not been posted.

79. For the above reasons, the Tribunal finds that the application is admissible, that the allegations made by Saint Vincent and the Grenadines are well founded for the purposes of these proceedings and that, consequently, Guinea must release promptly the M/V "Saiga" and the members of its crew currently detained or otherwise deprived of their liberty.

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80. The Tribunal can then consider the question of whether a bond or other security must be posted and, if so, the nature and amount of the bond or security.

81. Such release must be effected upon the posting of a reasonable bond or other financial security. The Tribunal cannot accede to the request of Saint Vincent and the Grenadines that no bond or financial security (or only a "symbolic bond") should be posted. The posting of a bond or security seems to the Tribunal necessary in view of the nature of the prompt release proceedings.

82. According to article 113, paragraph 2, of the Rules of the Tribunal, the Tribunal "shall determine the amount, nature and form of the bond or financial security to be posted". The most important guidance in this determination is the indication contained in article 292, paragraph 1, of the Convention that the bond or other financial security must be "reasonable". In the view of the Tribunal, the criterion of reasonableness encompasses the amount, the nature and the form of the bond or financial security. The overall balance of the amount, form and nature of the bond or financial security must be reasonable.

83. In considering such overall balance of amount, form and nature of the bond or financial security, the Tribunal must take account of the fact that the gasoil carried by the M/V "Saiga" has been discharged in the port of Conakry by order of the Guinean authorities. According to documents produced by Saint Vincent and the Grenadines and not contested by Guinea, the discharge of the full load of the M/V "Saiga" of 4,941,322 metric tons of gasoil, of density 0.8560 at 15° C, was completed on 12 November 1997.

84. Taking into consideration the commercial value of the gasoil discharged and the difficulties that might be incurred in restoring the gasoil to the holds of the M/V "Saiga", it is reasonable, in the view of the Tribunal, that the discharged gasoil, in the quantity mentioned above, shall be considered as a security to be held and, as the case may be, returned by Guinea, in kind or in its equivalent in United States dollars at the time of judgment.

85. In view of the circumstances, the Tribunal considers reasonable that to this security there should be added a financial security in the amount of four hundred thousand (400,000) United States dollars, to be posted in accordance with article 113, paragraph 3, of the Rules of the Tribunal, in the form of a letter of credit or bank guarantee, or, if agreed by the parties, in any other form.

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86. For these reasons,

THE TRIBUNAL,

(1) Unanimously.

*Finds* that the Tribunal has jurisdiction under article 292 of the United Nations Convention on the Law of the Sea to entertain the Application filed by Saint Vincent and the Grenadines on 13 November 1997;

(2) By 12 votes to 9,

*Finds* that the Application is admissible;

IN FAVOUR: *Judges* Zhao, Caminos, Marotta Rangel, Yankov, Kolodkin, Bamela Engo, Akl, Warioba, Laing, Treves, Marsit, Eiriksson;

AGAINST: *President* Mensah; *Vice-President* Wolfrum; *Judges* Yamamoto, Park, Nelson, Chandrasekhara Rao, Anderson, Vukas, Ndiaye;

(3) By 12 votes to 9,

*Orders* that Guinea shall promptly release the M/V "Saiga" and its crew from detention;

IN FAVOUR: *Judges* Zhao, Caminos, Marotta Rangel, Yankov, Kolodkin, Bamela Engo, Akl, Warioba, Laing, Treves, Marsit, Eiriksson;

AGAINST: *President* Mensah; *Vice-President* Wolfrum; *Judges* Yamamoto, Park, Nelson, Chandrasekhara Rao, Anderson, Vukas, Ndiaye;

(4) By 12 votes to 9,

*Decides* that the release shall be upon the posting of a reasonable bond or security;

IN FAVOUR: *Judges* Zhao, Caminos, Marotta Rangel, Yankov, Kolodkin, Bamela Engo, Akl, Warioba, Laing, Treves, Marsit, Eiriksson;

AGAINST: *President* Mensah; *Vice-President* Wolfrum; *Judges* Yamamoto, Park, Nelson, Chandrasekhara Rao, Anderson, Vukas, Ndiaye;

(5) By 12 votes to 9,

*Decides* that the security shall consist of: (1) the amount of gasoil discharged from the M/V "Saiga"; and (2) the amount of 400,000 United States dollars, to be posted in the form of a letter of credit or bank guarantee or, if agreed by the parties, in any other form.

IN FAVOUR: *Judges* Zhao, Caminos, Marotta Rangel, Yankov, Kolodkin, Bamela Engo, Akl, Warioba, Laing, Treves, Marsit, Eiriksson;

AGAINST: *President* Mensah; *Vice-President* Wolfrum; *Judges* Yamamoto, Park, Nelson, Chandrasekhara Rao, Anderson, Vukas, Ndiaye.

Done in English and in French, the English text being authoritative, in the Free and Hanseatic City of Hamburg, this fourth day of December, one thousand nine hundred and ninety-seven, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Saint Vincent and the Grenadines and the Government of Guinea, respectively.

Thomas A. MENSAH,  
President.

Gritakumar E. CHITTY,  
Registrar.

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*President* MENSAH, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his dissenting opinion to the Judgment of the Tribunal.

T. A. M.

*Vice-President* WOLFRUM and *Judge* YAMAMOTO, availing themselves of the right conferred on them by article 30, paragraph 3, of the Statute of the Tribunal, append their collective dissenting opinion to the Judgment of the Tribunal.

R. W.

S. Y.

*Judge* ANDERSON, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal appends his dissenting opinion to the Judgment of the Tribunal.

D. H. A.

*Judges* PARK, NELSON, CHANDRASEKHARA RAO, VUKAS and NDIAYE, availing themselves of the right conferred on them by article 30, paragraph 3, of the Statute of the Tribunal, append their collective dissenting opinion to the Judgment of the Tribunal.

C. H. P.

L. D. M. N.

P. C. R.

B. V.

T. M. N.

## Chapter VIII

### DECISIONS OF NATIONAL TRIBUNALS

#### Philippines

##### PHILIPPINE SUPREME COURT

*The Philippine Constitution and Philippine participation in worldwide trade liberalization and economic globalization—Question of possible nullification of the concurrence of the Philippine Senate in the ratification by the president of the Philippines of the Agreement Establishing the World Trade Organization—Analysis of the scope, goals and policies of the World Trade Organization—Limitation of sovereignty by international law and treaties*

EN BANC

[G.R. No. 118295. 2 May 1997.]

Wigberto E. Tañada and Anna Dominique Coseteng, as members of the Philippine Senate and as taxpayers; Gregorio Andolana and Joker Arroyo as members of the House of Representatives and as taxpayers; Nicanor P. Perlas and Horacio R. Morales, both as taxpayers; Civil Liberties Union, National Economic Protectionism Association, Center for Alternative Development Initiatives, Likas-Kayang Kaunlaran Foundation, Inc., Philippine Rural Reconstruction Movement, Demokratikong Kilusang Magbubukid ng Pilipinas, Inc., and Philippine Peasant Institute, in representation of various taxpayers and as non-governmental organizations, *petitioners*, vs. Edgardo Angara, Alberto Romulo, Leticia Ramos-Shahani, Heherson Alvarez, Agapito Aquino, Rodolfo Biazon, Neptali Gonzales, Ernesto Herrera, Jose Lina, Gloria Macapagal-Arroyo, Orlando Mercado, Blas Ople, John Osmeña, Santanina Rasul, Ramon Revilla, Raul Roco, Francisco Tatad and Freddie Webb, in their respective capacities as members of the Philippine Senate who concurred in the ratification by the President of the Philippines of the Agreement Establishing the World Trade Organization; Salvador Enriquez, in his capacity as Secretary of Budget and Management; Caridad Valdehuesa, in her capacity as National Treasurer; Rizalino Navarro, in his capacity as Secretary of Trade and Industry; Roberto Sebastian, in his capacity as Secretary of Agriculture; Roberto de Ocampo, in his capacity as Secretary of Finance; Roberto Romulo, in his capacity as Secretary of Foreign Affairs; and Teofisto T. Guingona, in his capacity as Executive Secretary, *respondents*.

## DECISION

PANGANIBAN, J.:

The emergence on 1 January 1995 of the World Trade Organization (WTO), abetted by the membership thereto of the vast majority of countries, has revolutionized international business and economic relations among States. It has irreversibly propelled the world towards trade liberalization and economic globalization. Liberalization, globalization, deregulation and privatization, the third-millennium buzzwords, are ushering in a new borderless world of business by sweeping away as mere historical relics the heretofore traditional modes of promoting and protecting national economies like tariffs, export subsidies, import quotas, quantitative restrictions, tax exemptions and currency controls. Finding market niches and becoming the best in specific industries in a market-driven and export-oriented global scenario are replacing age-old "beggar-thy-neighbour" policies that unilaterally protect weak and inefficient domestic producers of goods and services. In the words of Peter Drucker, the well known management guru, "Increased participation in the world economy has become the key to domestic economic growth and prosperity."

### *Brief historical background*

To hasten worldwide recovery from the devastation wrought by the Second World War, plans for the establishment of three multilateral institutions, inspired by that grand political body, the United Nations, were discussed at Dumbarton Oaks and Bretton Woods. The first was the World Bank, which was to address the rehabilitation and reconstruction of war-ravaged and, later, developing countries; the second, the International Monetary Fund (IMF), which was to deal with currency problems; and the third, the International Trade Organization (ITO), which was to foster order and predictability in world trade and to minimize unilateral protectionist policies that invited challenge, even retaliation, from other States. However, for a variety of reasons, including its non-ratification by the United States, ITO, unlike IMF and the World Bank, never took off. What remained was only the General Agreement on Tariffs and Trade (GATT). GATT was a collection of treaties governing access to the economies of treaty adherents with no institutionalized body administering the agreements or dependable system of dispute settlement.

After half a century and several dizzying rounds of negotiations, principally the Kennedy Round, the Tokyo Round and the Uruguay Round, the world finally gave birth to that administering body, the World Trade Organization, with the signing of the "Final Act" in Marrakesh, Morocco, and the ratification of the WTO Agreement by its members.<sup>1</sup>

Like many other developing countries, the Philippines joined WTO as a founding member with the goal, as articulated by President Fidel V. Ramos in two letters to the Senate (*infra*), of improving "Philippine access to foreign markets, especially its major trading partners, through the reduction of tariffs on its exports, particularly agricultural and industrial products". The President also saw in WTO the opening of "new opportunities for the services sector . . . , [the reduction of] costs and uncertainty associated with exporting . . . , and [the attraction of] more investments into the country". Although the Chief Executive did not



expressly mention it in his letter, the Philippines—and this is of special interest to the legal profession—would benefit from the WTO system of dispute settlement by judicial adjudication through the independent WTO settlement bodies called (a) Dispute Settlement Panel and (b) Appellate Tribunal. Heretofore, trade disputes were settled mainly through negotiations where solutions were arrived at frequently on the basis of relative bargaining strengths and where, naturally, weak and underdeveloped countries were at a disadvantage.

### *The petition in brief*

Arguing mainly (a) that WTO required the Philippines “to place nationals and products of member countries on the same footing as Filipinos and local products” and (b) that WTO “intrudes, limits and/or impairs” the constitutional powers of both Congress and the Supreme Court, the instant petition before this Court assails the WTO Agreement for violating the mandate of the 1987 Constitution to “develop a self-reliant and independent national economy effectively controlled by Filipinos . . . [to] give preference to qualified Filipinos [and to] promote the preferential use of Filipino labour, domestic materials and locally produced goods”.

Simply stated, does the Philippine Constitution prohibit Philippine participation in worldwide trade liberalization and economic globalization? Does it proscribe Philippine integration into a global economy that is liberalized, deregulated and privatized? These are the main questions raised in this petition for certiorari, prohibition and mandamus under rule 65 of the Rules of Court praying (a) for the nullification, on constitutional grounds, of the concurrence of the Philippine Senate in the ratification by the President of the Philippines of the Agreement Establishing the World Trade Organization (WTO Agreement, for brevity) and (b) for the prohibition of its implementation and enforcement through the release and utilization of public funds, the assignment of public officials and employees as well as the use of government properties and resources by respondent heads of various executive offices concerned therewith. This concurrence is embodied in Senate resolution 97, dated 14 December 1994.

### *The facts*

On 15 April 1994, Respondent Rizalino Navarro, then Secretary of the Department of Trade and Industry (Secretary Navarro, for brevity), representing the Government of the Republic of the Philippines, signed in Marrakesh, Morocco, the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Final Act, for brevity).

By signing the Final Act,<sup>2</sup> Secretary Navarro, on behalf of the Republic of the Philippines, agreed:

“(a) To submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities, with a view to seeking approval of the Agreement in accordance with their procedures; and

(b) To adopt the Ministerial Declarations and Decisions.”

On 12 August 1994, the members of the Philippine Senate received a letter dated 11 August 1994 from the President of the Philippines,<sup>3</sup> stating among other things that “the Uruguay Round Final Act is hereby submitted to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution”.

On 13 August 1994, the members of the Philippine Senate received another letter from the President of the Philippines<sup>4</sup> likewise dated 11 August 1994, which stated among other things that “the Uruguay Round Final Act, the Agreement Establishing the World Trade Organization, the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services are hereby submitted to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution”.

On 9 December 1994, the President of the Philippines certified the necessity of the immediate adoption of P.S. 1083, a resolution entitled “Concurring in the Ratification of the Agreement Establishing the World Trade Organization”.<sup>5</sup>

On 14 December 1994, the Philippine Senate adopted resolution 97, which “resolved, as it is hereby resolved, that the Senate concur, as it hereby concurs, in the ratification by the President of the Philippines of the Agreement Establishing the World Trade Organization”.<sup>6</sup> The text of the WTO Agreement is written on pages 137 et seq. of volume I of the 36-volume *Uruguay Round of Multilateral Trade Negotiations* and includes various agreements and associated legal instruments (identified in the said Agreement as annexes 1, 2 and 3 thereto and collectively referred to as “Multilateral Trade Agreements”, for brevity) as follows:

#### “ANNEX 1

- Annex 1A: Multilateral Agreement on Trade in Goods
  - General Agreement on Tariffs and Trade 1994
  - Agreement on Agriculture
  - Agreement on the Application of Sanitary and Phytosanitary Measures
  - Agreement on Textiles and Clothing
  - Agreement on Technical Barriers to Trade
  - Agreement on Trade-related Investment Measures
  - Agreement on Implementation of article VI of the General Agreement on Tariffs and Trade 1994
  - Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade 1994
  - Agreement on Pre-Shipment Inspection
  - Agreement on Rules of Origin
  - Agreement on Imports Licensing Procedures
  - Agreement on Subsidies and Coordinating Measures
  - Agreement on Safeguards
- Annex 1B: General Agreement on Trade in Services and Annexes
- Annex 1C: Agreement on Trade-related Aspects of Intellectual Property Rights

#### ANNEX 2

Understanding on Rules and Procedures Governing the Settlement of Disputes

#### ANNEX 3

Trade Policy Review Mechanism”

On 16 December 1994, the President of the Philippines signed<sup>7</sup> the Instrument of Ratification, declaring:

“Now therefore, be it known that I, Fidel V. Ramos, President of the Republic of the Philippines, after having seen and considered the aforementioned Agreement Establishing the World Trade Organization and the agree-

ments and associated legal instruments included in annexes one (1), two (2) and three (3) of that Agreement which are integral parts thereof, signed at Marrakesh, Morocco, on 15 April 1994, do hereby ratify and confirm, the same and every article and clause thereof."

To emphasize, the WTO Agreement ratified by the President of the Philippines is composed of the Agreement proper and "the associated legal instruments included in annexes one (1), two (2) and three (3) of that Agreement which are integral parts thereof".

On the other hand, the Final Act signed by Secretary Navarro embodies not only the WTO Agreement (and its integral annexes aforementioned) but also (a) the Ministerial Declarations and Decisions and (b) the Understanding on Commitments in Financial Services. In his Memorandum dated 13 May 1996,<sup>8</sup> the Solicitor General describes these two latter documents as follows:

"The Ministerial Decisions and Declarations are 25 declarations and decisions on a wide range of matters, such as measures in favour of least developed countries, notification procedures, relationship of WTO with the International Monetary Fund and agreements on technical barriers to trade and on dispute settlement.

"The Understanding on Commitments in Financial Services dwells on, among other things, standstill or limitations and qualifications of commitments to existing non-conforming measures, market access, national treatment and definitions of non-resident supplier of financial services, commercial presence and new financial service."

On 29 December 1994, the present petition was filed. After careful deliberation on respondents' comment and petitioners' reply thereto, the Court resolved, on 12 December 1995, to give due course to the petition, and the parties thereafter filed respective memoranda. The Court also requested the Honourable Lilia R. Bautista, the Philippine Ambassador to the United Nations stationed in Geneva, to submit a paper, hereafter referred to as "Bautista paper",<sup>9</sup> for brevity, (a) providing a historical background of and (b) summarizing the said agreements.

During the Oral Argument held on 27 August 1996, the Court directed:

"(a) The petitioners to submit (1) the Senate Committee report on the matter in controversy and (2) the transcript of proceedings/hearings in the Senate; and

"(b) The Solicitor General, as counsel for respondents, to file (1) a list of Philippine treaties signed prior to the Philippine adherence to the WTO Agreement, which derogate from Philippine sovereignty, and (2) copies of the multi-volume WTO Agreement and other documents mentioned in the Final Act, as soon as possible."

After receipt of the foregoing documents, the Court said it would consider the case submitted for resolution. In a Compliance dated 16 September 1996, the Solicitor General submitted a printed copy of the 36-volume *Uruguay Round of Multilateral Trade Negotiations*, and in another Compliance dated 24 October 1996, he listed the various "bilateral or multilateral treaties or international instruments involving derogation of Philippine sovereignty". Petitioners, on the other hand, submitted their Compliance dated 28 January 1997, on 30 January 1997.

### *The issues*

In their memorandum dated 11 March 1996, petitioners summarized the issues as follows:

"A. Whether the petition presents a political question or is otherwise not justiciable.

B. Whether the petitioner members of the Senate who participated in the deliberations and voting leading to the concurrence are estopped from impugning the validity of the Agreement Establishing the World Trade Organization or of the validity or of the concurrence.

C. Whether the provisions of the Agreement Establishing the World Trade Organization contravene the provisions of section 19, article II, and sections 10 and 12, article XII, all of the 1987 Philippine Constitution.

D. Whether provisions of the Agreement Establishing the World Trade Organization unduly limit, restrict and impair Philippine sovereignty, specifically the legislative power which, under section 2, article VI, 1987 Philippine Constitution, is 'vested in the Congress of the Philippines'.

E. Whether provisions of the Agreement Establishing the World Trade Organization interfere with the exercise of judicial power.

F. Whether the respondent members of the Senate acted in grave abuse of discretion amounting to lack or excess of jurisdiction when they voted for concurrence in the ratification of the constitutionally infirm Agreement Establishing the World Trade Organization.

G. Whether the respondent members of the Senate acted in grave abuse of discretion amounting to lack or excess of jurisdiction when they concurred only in the ratification of the Agreement Establishing the World Trade Organization, and not with the presidential submission which included the Final Act, Ministerial Declaration and Decisions, and the Understanding on Commitments in Financial Services."

On the other hand, the Solicitor General as counsel for respondents "synthesized the several issues raised by petitioners into the following:"<sup>10</sup>

"1. Whether or not the provisions of the Agreement Establishing the World Trade Organization and the Agreements and Associated Legal Instruments included in annexes one (1), two (2) and three (3) of that Agreement cited by petitioners directly contravene or undermine the letter, spirit and intent of section 19, article II, and sections 10 and 12, article XII, of the 1987 Constitution.

2. Whether or not certain provisions of the Agreement unduly limit, restrict or impair the exercise of legislative power by Congress.

3. Whether or not certain provisions of the Agreement impair the exercise of judicial power by this Honourable Court in promulgating the rules of evidence.

4. Whether or not the concurrence of the Senate in the ratification by the President of the Philippines of the Agreement Establishing the World Trade Organization implied rejection of the treaty embodied in the Final Act."

By raising and arguing only four issues against the seven presented by petitioners, the Solicitor General has effectively ignored three, namely: (1) whether

the petition presents a political question or is otherwise not justiciable; (2) whether petitioner members of the Senate (Wigberto E. Tañada and Anna Dominique Coseteng) are estopped from joining this suit; and (3) whether the respondent members of the Senate acted in grave abuse of discretion when they voted for concurrence in the ratification of the WTO Agreement. The foregoing notwithstanding, this Court resolved to deal with these three issues thus:

(1) The “political question” issue, being very fundamental and vital, and being a matter that probes into the very jurisdiction of this Court to hear and decide this case, was deliberated upon by the Court and will thus be ruled upon as the first issue;

(2) The matter of estoppel will not be taken up because this defence is waivable and the respondents have effectively waived it by not pursuing it in any of their pleadings; in any event, this issue, even if ruled in respondents’ favour, will not cause the petition’s dismissal as there are petitioners other than the two senators, who are not vulnerable to the defence of estoppel; and

(3) The issue of alleged grave abuse of discretion on the part of the respondent senators will be taken up as an integral part of the disposition of the four issues raised by the Solicitor General.

During its deliberations on the case, the Court noted that the respondents did not question the locus standi of petitioners. Hence, they are also deemed to have waived the benefit of such issue. They probably realized that grave constitutional issues, expenditures of public funds and serious international commitments of the nation are involved here, and that transcendental public interest requires that the substantive issues be met head on and decided on the merits, rather than skirted or deflected by procedural matters.<sup>11</sup>

To recapitulate, the issues that will be ruled upon shortly are:

(1) Does the petition present a justiciable controversy? Otherwise stated, does the petition involve a political question over which this Court has no jurisdiction?

(2) Do the provisions of the WTO Agreement and its three annexes contravene section 19, article II, and sections 10 and 12, article XII, of the Philippine Constitution?

(3) Do the provisions of said Agreement and its annexes limit, restrict or impair the exercise of legislative power by Congress?

(4) Do said provisions unduly impair or interfere with the exercise of judicial power by this Court in promulgating rules on evidence?

(5) Was the concurrence of the Senate in the WTO Agreement and its annexes sufficient and/or valid, considering that it did not include the Final Act, Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services?

#### *First issue: Does the Court have jurisdiction over the controversy?*

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. “The question thus posed is judicial rather than political. The

duty [to adjudicate] remains to assure that the supremacy of the Constitution is upheld.”<sup>12</sup> Once a “controversy as to the application or interpretation of a constitutional provision is raised before this Court (as in the instant case), it becomes a legal issue which the Court is bound by constitutional mandate to decide”.<sup>13</sup>

The jurisdiction of this Court to adjudicate the matters<sup>14</sup> raised in the petition is clearly set out in the 1987 Constitution,<sup>15</sup> as follows:

“Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”

The foregoing text emphasizes the judicial department’s duty and power to strike down grave abuse of discretion on the part of any branch or instrumentality of government, including Congress. It is an innovation in our political law.<sup>16</sup> As explained by former Chief Justice Roberto Concepcion,<sup>17</sup> “the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgement on matters of this nature.”

As this Court has repeatedly and firmly emphasized in many cases,<sup>18</sup> it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the Government.

As the petition alleges grave abuse of discretion and as there is no other plain, speedy or adequate remedy in the ordinary course of law, we have no hesitation at all in holding that this petition should be given due course and the vital questions raised therein ruled upon under rule 65 of the Rules of Court. Indeed, certiorari, prohibition and mandamus are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials. On this, we have no equivocation.

We should stress that, in deciding to take jurisdiction over this petition, this Court will not review the *wisdom* of the decision of the President and the Senate in enlisting the country into WTO, or pass upon the *merits* of trade liberalization as a policy espoused by said international body. Neither will it rule on the *propriety* of the Government’s economic policy of reducing/removing tariffs, taxes, subsidies, quantitative restrictions and other import/trade barriers. Rather, it will only exercise its constitutional duty “to determine whether or not there had been a grave abuse of discretion amounting to lack or excess of jurisdiction” on the part of the Senate in ratifying the WTO Agreement and its three annexes.

### *Second issue: The WTO Agreement and economic nationalism*

This is the *lis mota*, the main issue, raised by the petition.

Petitioners vigorously argue that the “letter, spirit and intent” of the Constitution mandating “economic nationalism” are violated by the so-called “parity provisions” and “national treatment” clauses scattered in various parts not only of the WTO Agreement and its annexes but also in the Ministerial Decisions and Declarations and in the Understanding on Commitments in Financial Services.

Specifically, the “flagship” constitutional provisions referred to are section 19, article II, and sections 10 and 12, article XII, of the Constitution, which are worded as follows:

*“Article II*

“DECLARATION OF PRINCIPLES AND STATE POLICIES

“ . . .

“Section 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

“ . . .

*“Article XII*

“NATIONAL ECONOMY AND PATRIMONY

“ . . .

“Section 10. . . . The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

“In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

“ . . .

“Section 12. The State shall promote the preferential use of Filipino labour, domestic materials and locally produced goods, and adopt measures that help make them competitive.”

Petitioners aver that these sacred constitutional principles are desecrated by the following WTO provisions quoted in their memorandum:<sup>19</sup>

(a) In the area of investment measures related to trade in goods (TRIMS, for brevity):

*“Article 2*

“NATIONAL TREATMENT AND QUANTITATIVE RESTRICTIONS

“1. Without prejudice to other rights and obligations under GATT 1994, no member shall apply any TRIM that is inconsistent with the provisions of article III or article XI of GATT 1994.

“2. An illustrative list of TRIMS that are inconsistent with the obligations of general elimination of quantitative restrictions provided for in paragraph 1 of article XI of GATT 1994 is contained in the annex to this Agreement.” (Agreement on Trade-related Investment Measures, vol. 27, *Uruguay Round, Legal Instruments*, p. 22121, emphasis supplied.)

The annex referred to reads as follows:

**"ANNEX  
"Illustrative list**

"1. *TRIMS that are inconsistent with the obligation of national treatment provided for in paragraph 4 of article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:*

(a) The purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of proportion of volume or value of its local production; or

(b) That an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.

"2. *TRIMS that are inconsistent with the obligations of general elimination of quantitative restrictions provided for in paragraph 1 of article XI of GATT 1994 include those which are mandatory or enforceable under domestic laws or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:*

(a) The importation by an enterprise of products used in or related to the local production that it exports;

(b) The importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange inflows attributable to the enterprise; or

(c) The exportation or sale for export specified in terms of particular products, in terms of volume or value of products, or in terms of a preparation of volume or value of its local production."

(Annex to the Agreement on Trade-related Investment Measures, vol. 27, *Uruguay Round, Legal Instruments*, p. 22125, emphasis supplied.)

The paragraph 4 of article III of GATT 1994 referred to is quoted as follows:

"The products of the territory of any contracting party imported into the territory of any other contracting party *shall be accorded treatment no less favourable than that accorded to like products of national origin* in respect of laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product." (Article III, GATT 1947, as amended by the Protocol Modifying Part II, and article XXVI of GATT, 14 September 1948, 62 UNTS 82-84, in relation to paragraph 1 (a) of the General Agreement on Tariffs and Trade 1994, vol. 1, *Uruguay Round, Legal Instruments*, p. 177, emphasis supplied.)

(b) In the area of trade-related aspects of intellectual property rights (TRIPS, for brevity):

"Each member shall accord to the nationals of other members *treatment no less favourable than that it accords to its own nationals* with regard to the protection of intellectual property . . ." (Paragraph 1, article 3, Agreement on Trade-related Aspects of Intellectual Property Rights, vol. 31, *Uruguay Round, Legal Instruments*, p. 25432, emphasis supplied.)



(c) In the area of the General Agreement on Trade in Services:

*"National treatment"*

"1. In the sectors inscribed in its schedule, and subject to any conditions and qualifications set out therein, each member shall accord to services and service suppliers of any other member, in respect of all measures affecting the supply of services, *treatment no less favourable than it accords to its own like services and service suppliers*.

"2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

"3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of completion in favour of services or service suppliers of the member compared to like services or service suppliers of any other member." (Article XVII, General Agreement on Trade in Services, vol. 28, *Uruguay Round, Legal Instruments*, p. 22610, emphasis supplied.)

It is petitioners' position that the foregoing "national treatment" and "parity provisions" of the WTO Agreement "place nationals and products of member countries on the same footing as Filipinos and local products", in contravention of the "Filipino first" policy of the Constitution. They allegedly render meaningless the phrase "effectively controlled by Filipinos". The constitutional conflict becomes more manifest when viewed in the context of the clear duty imposed on the Philippines as a WTO member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed agreements.<sup>20</sup> Petitioners further argue that these provisions contravene constitutional limitations on the role exports play in national development and negate the preferential treatment accorded to Filipino labour, domestic materials and locally produced goods.

On the other hand, respondents through the Solicitor General counter (1) that such Charter provisions are not self-executing and merely set out general policies; (2) that these nationalistic portions of the Constitution invoked by petitioners should not be read in isolation but should be related to other relevant provisions of article XII, particularly sections 1 and 13 thereof; (3) that read properly, the WTO clauses cited do not conflict with the Constitution; and (4) that the WTO Agreement contains sufficient provisions to protect developing countries like the Philippines from the harshness of sudden trade liberalization.

We shall now discuss and rule on these arguments.

*Declaration of principles not self-executing*

By its very title, article II of the Constitution is a "declaration of principles and State policies". The counterpart of this article in the 1935 Constitution<sup>21</sup> is called the "basic political creed of the nation" by Dean Vicente Sinco.<sup>22</sup> These principles in article II are not intended to be self-executing principles ready for enforcement through the courts.<sup>23</sup> They are used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws. As held in the leading case of *Kilosbayan, Incorporated vs. Morato*,<sup>24</sup> the principles and State policies enumerated in article II and some sec-

tions of article XII are not “self-executing provisions, the disregard of which can give rise to a cause of action in the courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation.”

In the same light, we held in *Basco vs. Pagcor*<sup>25</sup> that broad constitutional principles need legislative enactments to implement them, thus:

“On petitioners’ allegation that P.D. 1869 violates sections 11 (Personal dignity), 12 (Family) and 13 (Role of youth) of article II; section 13 (Social justice) of article XIII; and section 2 (Educational values) of article XIV of the 1987 Constitution, suffice it to state also that these are merely statements of principles and policies. As such, they are basically not self-executing, meaning a law should be passed by Congress to clearly define and effectuate such principles.

“In general, therefore, the 1935 provisions were not intended to be self-executing principles ready for enforcement through the courts. They were rather directives addressed to the executive and to the legislature. If the executive and the legislature failed to heed the directives of the article, the available remedy was not judicial but political. The electorate could express their displeasure with the failure of the executive and the legislature through the language of the ballot.” (Bernas, vol. II, p. 2.)”

The reasons for denying a cause of action to an alleged infringement of broad constitutional principles are sourced from basic considerations of due process and the lack of judicial authority to wade “into the uncharted ocean of social and economic policy-making”. Justice Florentino P. Feliciano, in his concurring opinion in *Oposa vs. Factoran, Jr.*,<sup>26</sup> explained these reasons as follows:

“My suggestion is simply that petitioners must, before the trial court, show a more specific legal right—a right cast in language of a significantly lower order of generality than article II (15) of the Constitution—that is or may be violated by the actions, or failures to act, imputed to the public respondent by petitioners so that the trial court can validly render judgement granting all or part of the relief prayed for. To my mind, the court should be understood as simply saying that such a more specific legal right or rights may well exist in our corpus of law, considering the general policy principles found in the Constitution and the existence of the Philippine Environment Code, and that the trial court should have given petitioners an effective opportunity so to demonstrate, instead of aborting the proceedings on a motion to dismiss.

“It seems to me important that the legal right which is an essential component of a cause of action [should] be a specific, operable legal right, rather than a constitutional or statutory policy, for at least two reasons. One is that, unless the legal right claimed to have been violated or disregarded is given in operational terms, defendants may well be unable to defend themselves intelligently and effectively; in other words, there are due process dimensions to this matter.

“The second is a broader-gauge consideration: where a specific violation of law or applicable regulation is not alleged or proved, petitioners can be expected to fall back on the expanded conception of judicial power in the second paragraph of section 1 of article VIII of the Constitution, which reads:

“Section 1 . . .

“Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.’

“When substantive standards as general as ‘the right to a balanced and healthy ecology’ and ‘the right to health’ are combined with remedial standards as broad-ranging as ‘a grave abuse of discretion amounting to lack or excess of jurisdiction’, the result will be, it is respectfully submitted, to propel courts into the uncharted ocean of social and economic policy-making. At least in respect of the vast area of environmental protection and management, our courts have no claim to special technical competence and experience and professional qualification. Where no specific, operable norms and standards are shown to exist, then the policy-making departments—the legislative and executive departments—must be given a real and effective opportunity to fashion and promulgate those norms and standards, and to implement them before the courts should intervene.”

*Economic nationalism should be read with other constitutional mandates to attain balanced development of economy*

On the other hand, sections 10 and 12 of article XII, apart from merely laying down general principles relating to the national economy and patrimony, should be read and understood in relation to the other sections in the said article, especially sections 1 and 13 thereof, which read:

“Section 1. The goals of the national economy are a more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

“The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

“In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop . . .

“ . . .

“Section 13. The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.”

As pointed out by the Solicitor General, section 1 lays down the *basic goals* of national economic development, as follows:

1. A more equitable distribution of opportunities, income and wealth;
2. A sustained increase in the amount of goods and services provided by the nation for the benefit of the people; and
3. An expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

With these goals in context, the Constitution then ordains the ideals of economic nationalism (a) by expressing preference in favour of qualified Filipinos "in the grant of rights, privileges and concessions covering the national economy and patrimony"<sup>27</sup> and in the use of "Filipino labour, domestic materials and locally-produced goods"; (b) by mandating the State to "adopt measures that help make them competitive";<sup>28</sup> and (c) by requiring the State to "develop a self-reliant and independent national economy effectively controlled by Filipinos".<sup>29</sup> In similar language, the Constitution takes into account the realities of the outside world as it requires the pursuit of "a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity";<sup>30</sup> and speaks of industries "which are competitive in both domestic and foreign markets" as well as of the protection of "Filipino enterprises against unfair foreign competition and trade practices".

It is true that in the recent case of *Manila Prince Hotel vs. Government Service Insurance System, et al.*,<sup>31</sup> this Court held that "section 10, second paragraph, article XII, of the 1987 Constitution is a mandatory, positive command which is complete in itself and which needs no further guidelines or implementing laws or rules for its enforcement. From its very words the provision does not require any legislation to put it in operation. It is per se judicially enforceable." However, as the constitutional provision itself states, it is enforceable only in regard to "the grants of rights, privileges and concessions covering national economy and patrimony" and not to every aspect of trade and commerce. It refers to exceptions rather than the rule. The issue here is not whether this paragraph of section 10 of article XII is self-executing or not. Rather, the issue is whether, as a rule, there are enough balancing provisions in the Constitution to allow the Senate to ratify the Philippine concurrence in the WTO Agreement. And we hold that there are.

All told, while the Constitution indeed mandates a bias in favour of Filipino goods, services, labour and enterprises, at the same time, it recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair.<sup>32</sup> In other words, the Constitution did not intend to pursue an isolationist policy. It did not shut out foreign investments, goods and services in the development of the Philippine economy. While the Constitution does not encourage the unlimited entry of foreign goods, services and investments into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is *unfair*.

#### *WTO recognizes need to protect weak economies*

On the other hand, respondents maintain that WTO itself has some built-in advantages to protect weak and developing economies, which comprise the vast majority of its members. Unlike in the United Nations, where major States have permanent seats and veto powers in the Security Council, in WTO, decisions are made on the basis of sovereign equality, with each member's vote equal in weight to that of any other. There is no WTO equivalent of the United Nations Security Council.

"WTO decides by consensus whenever possible; otherwise, decisions of the Ministerial Conference and the General Council shall be taken by the majority of the votes cast, except in cases of interpretation of the Agreement or waiver of the obligation of a member which would require a three-fourths

vote. Amendments would require a two-thirds vote in general. Amendments to most-favoured-nation provisions and the Amendments provision will require assent of all members. Any member may withdraw from the Agreement upon the expiration of six months from the date of notice of withdrawal.”<sup>33</sup>

Hence, poor countries can protect their common interests more effectively through WTO than through one-on-one negotiations with developed countries. Within WTO, developing countries can form powerful blocs to push their economic agenda more decisively than outside the organization. This is not merely a matter of practical alliances but a negotiating strategy rooted in law. Thus, the basic principles underlying the WTO Agreement recognize the need of developing countries like the Philippines to “share in the growth international trade *commensurate with the needs of their economic development*”. These basic principles are found in the preamble<sup>34</sup> to the WTO Agreement, as follows:

“The Parties to this Agreement,

“Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

“Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a *share in the growth in international trade commensurate with the needs of their economic development*,

“Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the *elimination of discriminatory treatment in international trade relations*,

“Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

“Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system . . .” (emphasis supplied)

*Specific WTO provisos protect developing countries*

So too, the Solicitor General points out that, pursuant to and consistent with the foregoing basic principles, the WTO Agreement grants developing countries a more lenient treatment, giving their domestic industries some protection from the rush of foreign competition. Thus, with respect to tariffs in general, preferential treatment is given to developing countries in terms of the *amount of tariff reduction* and the *period within which the reduction is to be spread out*. Specifically, GATT requires an average tariff reduction rate of 36 per cent for developed countries to be effected within a period of six years while developing

countries, including the Philippines, are *required to effect an average tariff reduction of only 24 per cent within 10 years.*

In respect to *domestic* subsidy, GATT requires *developed countries* to reduce domestic support to agricultural products by *20 per cent over six years*, as compared to *only 13 per cent for developing countries to be effected within 10 years.*

In regard to export subsidy for agricultural products, GATT requires developed countries to reduce their budgetary outlays for export subsidy by *36 per cent* and export volumes receiving export subsidy by *21 per cent within a period of six years.* For developing countries, however, the reduction rate is only *two thirds* of that prescribed for developed countries and a longer *period of 10 years* within which to effect such reduction.

Moreover, GATT itself has provided built-in protection from unfair foreign competition and trade practices, including anti-dumping measures, countervailing measures and safeguards against import surges. Where local businesses are jeopardized by unfair foreign competition, the Philippines can avail itself of these measures. There is hardly, therefore, any basis for the statement that under WTO, local industries and enterprises will all be wiped out and that Filipinos will be deprived of control of the economy. Quite the contrary, the weaker situations of developing nations like the Philippines have been taken into account; thus, there would be no basis to say that in joining WTO, the respondents have gravely abused their discretion. True, they have made a bold decision to steer the ship of State into the yet uncharted sea of economic liberalization. But such decision cannot be set aside on the ground of grave abuse of discretion, simply because we disagree with it or simply because we believe only in other economic policies. As stated above, the Court in taking jurisdiction of this case will not pass upon the advantages and disadvantages of trade liberalization as an economic policy. It will only perform its constitutional duty of determining whether the Senate committed grave abuse of discretion.

### *Constitution does not rule out foreign competition*

Furthermore, the constitutional policy of a “self-reliant and independent national economy”<sup>35</sup> does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither “economic seclusion” nor “mendicancy in the international community”. As explained by Constitutional Commissioner Bernardo Villegas, sponsor of this constitutional policy:

*“Economic self-reliance is a primary objective of a developing country that is keenly aware of overdependence on external assistance for even its most basic needs. It does not mean autarky or economic seclusion; rather, it means avoiding mendicancy in the international community. Independence refers to the freedom from undue foreign control of the national economy, especially in such strategic industries as in the development of natural resources and public utilities.”*<sup>36</sup>

The WTO reliance on “most favoured nation”, “national treatment” and “trade without discrimination” cannot be struck down as unconstitutional as in fact they are rules of equality and reciprocity that apply to all WTO members. Aside from envisioning a trade policy based on “equality and reciprocity”,<sup>37</sup> the fundamental law encourages industries that are “competitive in both domestic and foreign markets”, thereby demonstrating a clear policy against a sheltered domestic trade environment, but one in favour of the gradual development of robust

industries that can compete with the best in the foreign markets. Indeed, Filipino managers and Filipino enterprises have shown the capability and tenacity to compete internationally. And given a free trade environment, Filipino entrepreneurs and managers in Hong Kong have demonstrated the Filipino capacity to grow and to prosper against the best offered under a policy of laissez-faire.

*Constitution favours consumers, not industries or enterprises*

The Constitution has not really shown any unbalanced bias in favour of any business or enterprise, nor does it contain any specific pronouncement that Filipino companies should be pampered with a total proscription of foreign competition. On the other hand, respondents claim that WTO/GATT aims to make available to the Filipino consumer the best goods and services obtainable anywhere in the world at the most reasonable prices. Consequently, the question boils down to whether WTO/GATT will favour the general welfare of the public at large.

Will adherence to the WTO treaty bring this ideal (of favouring the general welfare) to reality?

Will WTO/GATT succeed in promoting the Filipinos' general welfare because it will, as promised by its promoters, expand the country's exports and generate more employment?

Will it bring more prosperity, employment, purchasing power and quality products at the most reasonable rates to the Filipino public?

The responses to these questions involve "judgement calls" by our policy makers, for which they are answerable to our people during appropriate electoral exercises. Such questions and the answers thereto are not subject to judicial pronouncements based on grave abuse of discretion.

*Constitution designed to meet future events and contingencies*

No doubt, the WTO Agreement was not yet in existence when the Constitution was drafted and ratified in 1987. That does not mean, however, that the Charter is necessarily flawed in the sense that its framers might not have anticipated the advent of a borderless world of business. By the same token, the United Nations was not yet in existence when the 1935 Constitution became effective. Did that necessarily mean that the then Constitution might not have contemplated a diminution of the absoluteness of sovereignty when the Philippines signed the Charter of the United Nations, thereby effectively surrendering part of its control over its foreign relations to the decisions of various United Nations organs like the Security Council?

It is not difficult to answer this question. Constitutions are designed to meet not only the vagaries of contemporary events; they should be interpreted to cover even future and unknown circumstances. It is to the credit of its drafters that a Constitution can withstand the assaults of bigots and infidels but at the same time bend with the refreshing winds of change necessitated by unfolding events. As one eminent political law writer and respected jurist<sup>38</sup> explains:

"The Constitution must be quintessential rather than superficial, the root and not the blossom, the base and framework only of the edifice that is yet to rise. It is but the core of the dream that must take shape, not in a twinkling by mandate our delegates, but slowly 'in the crucible of Filipino minds and hearts', where it will in time develop its sinews and gradually gather its strength and finally achieve its substance. In fine, the Constitution cannot,

like the goddess Athena, rise full-grown from the brow of the Constitutional Convention, nor can it conjure by mere fiat an instant Utopia. *It must grow with the society it seeks to restructure and march apace with the progress of the race, drawing from the vicissitudes of history the dynamism and vitality that will keep it, far from becoming a petrified rule, a pulsing, living law attuned to the heartbeat of the nation.*"

### *Third issue: The WTO Agreement and legislative power*

The WTO Agreement provides that "[e]ach member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements".<sup>39</sup> Petitioners maintain that this undertaking "unduly limits, restricts and impairs Philippine sovereignty, specifically the legislative power which under section 2, article VI, of the 1987 Philippine Constitution is vested in the Congress of the Philippines. It is an assault on the sovereign powers of the Philippines because this means that Congress could not pass legislation that will be good for our national interest and general welfare if such legislation will not conform with the WTO Agreement, which not only relates to the trade in goods . . . but also to the flow of investments and money . . . as well as to a whole slew of agreements on sociocultural matters . . ." <sup>40</sup>

More specifically, petitioners claim that said WTO proviso derogates from the power to tax, which is lodged in the Congress.<sup>41</sup> And while the Constitution allows Congress to authorize the President to fix tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts, such authority is subject to "specified limits and . . . such limitations and restrictions" as Congress may provide,<sup>42</sup> as in fact it did under section 401 of the Tariff and Customs Code.

### *Sovereignty limited by international law and treaties*

This Court notes and appreciates the ferocity and passion by which petitioners stressed their arguments on this issue. However, while sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations. Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution "adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity, with all nations".<sup>43</sup> By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws.<sup>44</sup> One of the oldest and most fundamental rules in international law is *pacta sunt servanda*: international agreements must be performed in good faith. "A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties . . . A State which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfilment of the obligations undertaken."<sup>45</sup>

By their inherent nature, treaties really limit or restrict the absoluteness of sovereignty. By their voluntary act, nations may surrender some aspects of their State power in exchange for greater benefits granted by or derived from a convention or pact. After all, States, like individuals, live with coequals, and in pursuit of mutually covenanted objectives and benefits, they also commonly agree to limit



the exercise of their otherwise absolute rights. Thus, treaties have been used to record agreements between States concerning such widely diverse matters as, for example, the lease of naval bases, the sale or cession of territory, the termination of war, the regulation of conduct of hostilities, the formation of alliances, *the regulation of commercial relations*, the settling of claims, the laying down of rules governing conduct in peace and the establishment of international organizations.<sup>46</sup> The sovereignty of a State therefore cannot in fact and in reality be considered absolute. Certain restrictions enter into the picture: (a) limitations imposed by the very nature of membership in the family of nations and (b) limitations imposed by treaty stipulations. As aptly put by John F. Kennedy, "Today, no nation can build its destiny alone. The age of self-sufficient nationalism is over. The age of interdependence is here."<sup>47</sup>

### *Charter of the United Nations and other treaties limit sovereignty*

Thus, when the Philippines joined the United Nations as one of its 51 Charter Members, it consented to restrict its sovereign rights under the "concept of sovereignty as auto-limitation".<sup>47A</sup> Under Article 2 of the Charter of the United Nations, "[a]ll Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action". Such assistance includes payment of its corresponding share not merely in administrative expenses but also in expenditures for the peacekeeping operations of the Organization. In its advisory opinion of 20 July 1961, the International Court of Justice held that moneys used by the United Nations Emergency Force in the Middle East and in the Congo were "expenses of the United Nations" under Article 17, paragraph 2, of the Charter of the United Nations. Hence, all its Members must bear their corresponding share in such expenses. In this sense, the Philippine Congress is restricted in its power to appropriate. It is compelled to appropriate funds whether it agrees with such peacekeeping expenses or not. So too, under Article 105 of the said Charter, the United Nations and its representatives enjoy diplomatic privileges and immunities, thereby limiting again the exercise of sovereignty of Members within their own territory. Another example: although "sovereign equality" and "domestic jurisdiction" of all Members are set forth as underlying principles in the Charter of the United Nations, such provisos are, however, subject to enforcement measures decided by the Security Council for the maintenance of international peace and security under Chapter VII of the Charter. A final example: under Article 103, "[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligation under the present Charter shall prevail", thus unquestionably denying the Philippines, as a Member, the sovereign power to make a choice as to which of conflicting obligations, if any, to honour.

Apart from the United Nations Treaty, the Philippines has entered into many other international pacts, both bilateral and multilateral, that involve limitations on Philippine sovereignty. These are enumerated by the Solicitor General in his Compliance dated 24 October 1996, as follows:

"(a) Bilateral Convention with the United States regarding taxes on income, where the Philippines agreed, among others, to exempt from tax, income received in the Philippines by, among others, the Federal Reserve Bank of the United States, the Export/Import Bank of the United States, the

Overseas Private Investment Corporation of the United States. Likewise, in said Convention, wages, salaries and similar remunerations paid by the United States to its citizens for labour and personal services performed by them as employees or officials of the United States are exempt from income tax by the Philippines;

(b) Bilateral Agreement with Belgium, providing, among others, for the avoidance of double taxation with respect to taxes on income;

(c) Bilateral Convention with the Kingdom of Sweden for the avoidance of double taxation;

(d) Bilateral Convention with the French Republic for the avoidance of double taxation;

(e) Bilateral Air Transport Agreement with [the Republic of] Korea where the Philippines agreed to exempt from all customs duties, inspection fees and other duties or taxes aircraft of the Republic of Korea and the regular equipment, spare parts and supplies arriving with said aircraft;

(f) Bilateral Air Service Agreement with Japan, where the Philippines agreed to exempt from customs duties, excise taxes, inspection fees and other similar duties, taxes or charges for fuel, lubricating oils, spare parts, regular equipment, stores on board Japanese aircraft while on Philippine soil;

(g) Bilateral Air Service Agreement with Belgium, where the Philippines granted Belgian air carriers the same privileges as those granted to Japanese and [Republic of] Korean air carriers under separate Air Service Agreements;

(h) Bilateral Notes with Israel for the abolition of transit and visitor visas where the Philippines exempted Israeli nationals from the requirement of obtaining transit or visitor visas for a sojourn in the Philippines not exceeding 59 days;

(i) Bilateral Agreement with France exempting French nationals from the requirement of obtaining transit and visitor visas for a sojourn not exceeding 59 days;

(j) Multilateral Convention on Special Missions, where the Philippines agreed that premises of special missions in the Philippines are inviolable and its agents cannot enter said premises without consent of the Head of Mission concerned. Special missions are also exempted from customs duties, taxes and related charges;

(k) Multilateral Convention on the Law of Treaties. In this Convention, the Philippines agreed to be governed by the Vienna Convention on the Law of Treaties;

(l) Declaration of the President of the Philippines accepting compulsory jurisdiction of the International Court of Justice. The International Court of Justice has jurisdiction in all legal disputes concerning the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of international obligation."

In the foregoing treaties, the Philippines has effectively agreed to limit the exercise of its sovereign powers of taxation, eminent domain and police power. The underlying consideration in this partial surrender of sovereignty is the reciprocal commitment of the other contracting States in granting the same privileges

and immunities to the Philippines, its officials and its citizens. The same reciprocity characterizes the Philippine commitments under WTO-GATT.

"International treaties, whether relating to nuclear disarmament, human rights, the environment, the law of the sea, or trade, constrain domestic political sovereignty through the assumption of external obligations. But unless anarchy in international relations is preferred as an alternative, in most cases we accept that the benefits of the reciprocal obligations involved outweigh the costs associated with any loss of political sovereignty. [T]rade treaties that structure relations by reference to durable, well-defined substantive norms and objective dispute resolution procedures reduce the risks of larger countries exploiting raw economic power to bully smaller countries, by subjecting power relations to some form of legal ordering. In addition, smaller countries typically stand to gain disproportionately from trade liberalization. This is due to the simple fact that liberalization will provide access to a larger set of potential new trading relationships than in the case of the larger country gaining enhanced success to the smaller country's market."<sup>48</sup>

The point is that, as shown by the foregoing treaties, a portion of sovereignty may be waived without violating the Constitution, based on the rationale that the Philippines "adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of . . . cooperation and amity with all nations".

#### *Fourth issue: The WTO Agreement and judicial power*

Petitioners aver that article 34, paragraph 1, of the General Provisions and Basic Principles of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)<sup>49</sup> intrudes on the power of the Supreme Court to promulgate rules concerning pleading, practice and procedures.<sup>50</sup>

To understand the scope and meaning of article 34, TRIPS,<sup>51</sup> it will be fruitful to restate its full text as follows:

#### *"Article 34*

##### *"PROCESS PATENTS: BURDEN OF PROOF*

"1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1 (b) of article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

- (a) If the product obtained by the patented process is new;
- (b) If there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

"2. Any member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition re-

ferred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

“3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.”

From the above, a WTO member is required to provide a rule of disputable (note the words “in the absence of proof to the contrary”) presumption that a product shown to be identical to one produced with the use of a patented process shall be deemed to have been obtained by the (illegal) use of the said patented process, (a) where such product obtained by the patented product is new, or (b) where there is “substantial likelihood” that the identical product was made with the use of the said patented process but the owner of the patent could not determine the exact process used in obtaining such identical product. Hence, the “burden of proof” contemplated by article 34 should actually be understood as the duty of the alleged patent infringer to overthrow such presumption. Such burden, properly understood, actually refers to the “burden of evidence” (burden of going forward) placed on the producer of the identical (or fake) product to show that his product was produced without the use of the patented process.

The foregoing notwithstanding, the patent owner still has the “burden of proof” since, regardless of the presumption provided under paragraph 1 of article 34, such owner still has to introduce evidence of the existence of the alleged identical product, the fact that it is “identical” to the genuine one produced by the patented process and the fact of “newness” of the genuine product or the fact of “substantial likelihood” that the identical product was made by the patented process.

The foregoing should really present no problem in changing the rules of evidence as the present law on the subject, Republic Act No. 165, as amended, otherwise known as the Patent Law, provides a similar presumption in cases of infringement of patented design or utility model, thus:

“SEC. 60. *Infringement.*—Infringement of a design patent or of a patent for utility model shall consist in unauthorized copying of the patented design or utility model for the purpose of trade or industry in the article or product and in the making, using or selling of the article or product copying the patented design or utility model. *Identity or substantial identity with the patented design or utility model shall constitute evidence of copying.*” (emphasis supplied)

Moreover, it should be noted that the requirement of article 34 to provide a disputable presumption applies only if (a) the product obtained by the patented process is *new* or (b) there is a substantial likelihood that the identical product was made by the process and the process owner has not been able through reasonable effort to determine the process used. Where either of these two provisos does not obtain, members shall be free to determine the appropriate method of implementing the provisions of TRIPS within their own internal systems and processes.

By and large, the arguments adduced in connection with our disposition of the third issue—derogation of legislative power—will apply to this fourth issue also. Suffice it to say that the reciprocity clause more than justifies such intrusion, if any actually exists. Besides, article 34 does not contain an unreasonable burden, consistent as it is with due process and the concept of adversarial dispute settlement inherent in our judicial system.

So too, since the Philippines is a signatory to most international conventions on patents, trademarks and copyrights, the adjustment in legislation and rules of procedure will not be substantial.<sup>52</sup>

*Fifth issue: Concurrence only in the WTO Agreement and not in other documents contained in the Final Act*

Petitioners allege that the Senate concurrence in the WTO Agreement and its annexes—but not in the other documents referred to in the Final Act, namely the Ministerial Declaration and Decisions and the Understanding on Commitments in Financial Services—is defective and insufficient and thus constitutes abuse of discretion. They submit that such concurrence in the WTO Agreement *alone* is flawed because it is in effect a rejection of the Final Act, which in turn was the document signed by Secretary Navarro, in representation of the Republic upon authority of the President. They contend that the second letter of the President to the Senate,<sup>53</sup> which enumerated what constitutes the Final Act, should have been the subject of concurrence of the Senate.

“A *final act*, sometimes called *protocol de clôture*, is an instrument which records the winding up of the proceedings of a diplomatic conference and usually includes a reproduction of the texts of treaties, conventions, recommendations and other acts agreed upon and signed by the plenipotentiaries attending the conference.”<sup>54</sup>

It is not the treaty itself. It is rather a summary of the proceedings of a protracted conference which may have taken place over several years. The text of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations is contained in just one page<sup>55</sup> in volume I of the 36-volume *Uruguay Round of Multilateral Trade Negotiations*. By signing the said Final Act, Secretary Navarro as representative of the Republic of the Philippines undertook:

“(a) To submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities with a view to seeking approval of the Agreement in accordance with their procedures; and

(b) To adopt the Ministerial Declarations and Decisions.”

The assailed Senate resolution 97 expressed concurrence in exactly what the Final Act required from its signatories, namely, concurrence of the Senate in the WTO Agreement.

The Ministerial Declarations and Decisions were deemed adopted without need for ratification. They were approved by the Ministers by virtue of article XXV, paragraph 1, of GATT, which provides that representatives of the members can meet “to give effect to those provisions of this Agreement which invoke joint action, and generally with a view to facilitating the operation and furthering the objectives of this Agreement”.<sup>56</sup>

The Understanding on Commitments in Financial Services, also approved in Marrakesh, does not apply to the Philippines. It applies only to those 27 members which “have indicated in their respective schedules of commitments on standstill, elimination of monopoly, expansion of operation of existing financial service suppliers, temporary entry of personnel, free transfer and processing of information, and national treatment with respect to access to payment, clearing systems and refinancing available in the normal course of business”.<sup>57</sup>

On the other hand, the WTO Agreement itself expresses what multilateral agreements are deemed included as its integral parts,<sup>58</sup> as follows:

*"Article II*

*"SCOPE OF THE WTO*

"1. The WTO shall provide the common institutional framework for the conduct of trade relations among its members in matters related to the agreements and associated legal instruments included in the annexes to this Agreement.

"2. The agreements and associated legal instruments included in annexes 1, 2 and 3 (hereinafter referred to as 'Multilateral Trade Agreements') are integral parts of this Agreement, binding on all members.

"3. The agreements and associated legal instruments included in annex 4 (hereinafter referred to as 'Plurilateral Trade Agreements') are also part of this Agreement for those members that have accepted them, and are binding on those members. The Plurilateral Trade Agreements do not create either obligation or rights for members that have not accepted them.

"4. The General Agreement on Tariffs and Trade 1994 as specified in annex 1A (hereinafter referred to as 'GATT 1994') is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act adopted at the conclusion of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as 'GATT 1947')."

It should be added that the Senate was well aware of what it was concurring in, as shown by the members' deliberation on 25 August 1994. After reading the letter of President Ramos dated 11 August 1994,<sup>59</sup> the senators of the Republic minutely dissected what the Senate was concurring in, as follows:<sup>60</sup>

"The Chairman: Yes. Now, the question of the validity of the submission came up in the first day hearing of this Committee yesterday. Was the observation made by Senator Tañada that what was submitted to the Senate was not the agreement on establishing the World Trade Organization by the final act of the Uruguay Round which is not the same as the agreement establishing the World Trade Organization? And on that basis, Senator Tolentino raised a point of order which, however, he agreed to withdraw upon understanding that his suggestion for an alternative solution at that time was acceptable. That suggestion was to treat the proceedings of the Committee as being in the nature of briefings for senators until the question of the submission could be clarified.

"And so, Secretary Romulo, in effect, is the President submitting a new ... is he making a new submission which improves on the clarity of the first submission?

"Mr. Romulo: Mr. Chairman, to make sure that it is clear-cut and there should be no misunderstanding, it was his intention to clarify all matters by giving this letter.

"The Chairman: Thank you.

"Can this Committee hear from Senator Tañada and, later on, Senator Tolentino since they were the ones that raised this question yesterday?

"Senator Tañada, please.

*"Senator Tañada: Thank you, Mr. Chairman.*

*"Based on what Secretary Romulo has read, it would now clearly appear that what is being submitted to the Senate for ratification is not the Final Act of the Uruguay Round, but rather the Agreement on the World Trade Organization as well as the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services.*

*"I am now satisfied with the wording of the new submission of President Ramos.*

*"Senator Tañada: . . . of President Ramos, Mr. Chairman.*

*"The Chairman: Thank you, Senator Tañada. Can we hear from Senator Tolentino? And after him Senator Neptali Gonzales and Senator Lina.*

*"Senator Tolentino: Mr. Chairman, I have not seen the new submission actually transmitted to us but I saw the draft of his earlier, and I think it now complies with the provisions of the Constitution, and with the Final Act itself. The Constitution does not require us to ratify the Final Act. It requires us to ratify the Agreement which is now being submitted. The Final Act itself specifies what is going to be submitted to the Governments of the participants.*

*"In paragraph 2 of the Final Act, we read and I quote:*

*" "By signing the present Final Act, the representatives agree: (a) to submit as appropriate the WTO Agreement for the consideration of the respective component authorities with a view to seeking approval of the Agreement in accordance with their procedures."*

*"In other words, it is not the Final Act that was agreed to be submitted to the Governments for ratification or acceptance whatever their constitutional procedures may provide, but it is the World Trade Organization Agreement. And if that is the one that is being submitted now, I think it satisfies both the Constitution and the Final Act itself.*

*"Thank you, Mr. Chairman.*

*"The Chairman: Thank you, Senator Tolentino. May I call on Senator Gonzales.*

*"Senator Gonzales: Mr. Chairman, my views on this matter are already a matter of record. And they had been adequately reflected in the journal of yesterday's session and I don't see any need for repeating the same.*

*"Now, I would consider the new submission as an act ex abundante cautela.*

*"The Chairman: Thank you, Senator Gonzales. Senator Lina, do you want to make any comment on this?*

*"Senator Lina: Mr. President, I agree with the observation just made by Senator Gonzales out of the abundance of questionable. Then the new submission is, I believe, stating the obvious and therefore I have no further comment to make."*

## Epilogue

In praying for the nullification of the Philippine ratification of the WTO Agreement, petitioners are invoking this Court's constitutionally imposed duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the Senate in giving its concurrence therein via Senate resolution 97. Procedurally, a writ of certiorari grounded on grave abuse of discretion may be issued by the Court under rule 65 of the Rules of Court when it is amply shown that petitioners have no other plain, speedy and adequate remedy in the ordinary course of law.

By grave abuse of discretion is meant such capricious and whimsical exercise of judgement as is equivalent to lack of jurisdiction.<sup>61</sup> Mere abuse of discretion is not enough. It must be *grave* abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>62</sup> Failure on the part of the petitioner to show grave abuse of discretion will result in the dismissal of the petition.<sup>63</sup>

In rendering this decision, this Court never forgets that the Senate, whose act is under review, is one of two sovereign houses of Congress and is thus entitled to great respect in its actions. It is itself a constitutional body independent and coordinate, and thus its actions are presumed regular and done in good faith. Unless convincing proof and persuasive arguments are presented to overthrow such presumptions, this Court will resolve every doubt in its favour. Using the foregoing well-accepted definition of grave abuse of discretion and the presumption of regularity in the Senate's processes, this Court cannot find any cogent reason to impute grave abuse of discretion to the Senate's exercise of its power of concurrence in the WTO Agreement granted it by section 21 of article VII of the Constitution.<sup>64</sup>

It is true, as alleged by petitioners, that broad constitutional principles require the State to develop an independent national economy effectively controlled by Filipinos; and to protect and/or prefer Filipino labour, products, domestic materials and locally produced goods. But it is equally true that such principles, while serving as judicial and legislative guides, are not in themselves sources of causes of action. Moreover, there are other equally fundamental constitutional principles relied upon by the Senate which mandate the pursuit of a "trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity" and the promotion of industries "which are competitive in both domestic and foreign markets", thereby justifying its acceptance of said treaty. So too, the alleged impairment of sovereignty in the exercise of legislative and judicial powers is balanced by the adoption of the generally accepted principles of international law as part of the law of the land and the adherence of the Constitution to the policy of cooperation and amity with all nations.

That the Senate, after deliberation and voting, voluntarily and overwhelmingly gave its consent to the WTO Agreement thereby making it "a part of the law of the land" is a legitimate exercise of its sovereign duty and power. We find no "patent and gross" arbitrariness or despotism "by reason of passion or personal hostility" in such exercise. It is not impossible to surmise that this Court, or at least some of its members, may even agree with petitioners that it is more advantageous to the national interest to strike down Senate resolution 97. But that is not a legal reason to attribute grave abuse of discretion to the Senate and to nullify its



decision. To do so would constitute grave abuse in the exercise of our own judicial power and duty. Ineludably, what the Senate did was a valid exercise of its authority. As to whether such exercise was wise, beneficial or viable is outside the realm of judicial inquiry and review. That is a matter between the elected policy makers and the people. As to whether the nation should join the worldwide march towards trade liberalization and economic globalization is a matter that our people should determine in electing their policy makers. After all, the WTO Agreement allows withdrawal of membership, should this be the political desire of a member.

The eminent futurist John Naisbitt, author of the best-seller *Megatrends*, predicts an Asian renaissance<sup>65</sup> where “the East will become the dominant region of the world economically, politically and culturally in the next century”. He refers to the “free market” espoused by WTO as the “catalyst” in this coming Asian ascendancy. There are at present about 31 countries, including China, Russia and Saudi Arabia, negotiating for membership in WTO. Notwithstanding objections against possible limitations on national sovereignty, WTO remains as the only viable structure for multilateral trading and the veritable forum for the development of international trade law. The alternative to WTO is isolation, stagnation, if not economic self-destruction. Duly enriched with original membership, keenly aware of the advantages and disadvantages of globalization with its online experience, and endowed with a vision of the future, the Philippines now straddles the crossroads of an international strategy for economic prosperity and stability in the new millennium. Let the people, through their duly authorized elected officers, make their free choice.

Wherefore, the petition is *dismissed* for lack of merit.

So Ordered.

*Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Francisco, Hermosissima, Jr., and Torres, Jr., JJ., concur.*

*Padilla and Vitug, JJ., concur in the result.*

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#### NOTES

<sup>1</sup>In annex A of her memorandum, dated 8 August 1996, received by this Court on 12 August 1996, Philippine Ambassador to the United Nations, the World Trade Organization and other international organizations Lilia R. Bautista (hereafter referred to as the “Bautista paper”) submitted a “46-year chronology” of GATT, as follows:

“1947 *The birth of GATT*. On 30 October 1947, the General Agreement on Tariffs and Trade (GATT) was signed by 23 nations at the Palais des Nations in Geneva. The Agreement contained tariff concessions agreed to in the first multilateral trade negotiations and a set of rules designed to prevent those concessions from being frustrated by restrictive trade measures. The 23 founding Contracting Parties were members of the Preparatory Committee established by the United Nations Economic and Social Council in 1946 to draft the charter of the International Trade Organization (ITO). ITO was envisaged as the final leg of a triad of post-war economic agencies (the other two were the International Monetary Fund and the International Bank for Reconstruction—later the World Bank).

“In parallel with this task, the Committee members decided to negotiate tariff concessions among themselves. From April to October 1947, the participants completed some 123 negotiations and established 20 schedules containing the tariff reductions and bindings which became an integral part of GATT. Those schedules resulting from the first round covered some 45,000 tariff concessions and about \$10 billion in trade.

"GATT was conceived as an interim measure that put into effect the commercial-policy provisions of ITO. In November, delegations from 56 countries met in Havana to consider the ITO draft as a whole. After long and difficult negotiations, some 53 countries signed the Final Act authenticating the text of the Havana Charter in March 1948. There was no commitment, however, from Governments to ratification and, in the end, ITO was stillborn, leaving GATT as the only international instrument governing the conduct of world trade.

"1948 *Entry into force.* On 1 January 1948, GATT entered into force. The 23 founding members were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, United Kingdom and United States. The first session of the Contracting Parties was held from February to March in Havana. The secretariat of the Interim Commission for ITO, which served as the ad hoc secretariat of GATT, moved from Lake Placid, New York, to Geneva. The Contracting Parties held their second session in Geneva from August to September.

"1949 *Second Round at Annecy.* During the second Round of trade negotiations, held from April to August at Annecy, France, the Contracting Parties exchanged some 5,000 tariff concessions. At their third session, they also dealt with the accession of 10 more countries.

"1950 *Third Round at Torquay.* From September 1950 to April 1951, the Contracting Parties exchanged some 8,700 tariff concessions in the English town, yielding tariff reductions of about 25 per cent in relation to the 1948 level. Four more countries acceded to GATT. During the fifth session of the Contracting Parties, the United States indicated that the ITO Charter would not be resubmitted to the United States Congress; this, in effect, meant that ITO would not come into operation.

"1956 *Fourth Round at Geneva.* The fourth Round was completed in May and produced some \$2.5 billion worth of tariff reductions. At the beginning of the year, the GATT commercial policy course for officials of developing countries was inaugurated.

"1958 *The Haberler report.* GATT published *Trends in International Trade* in October. Known as the 'Haberler report' in honour of Professor Gottfried Haberler, the chairman of the panel of eminent economists, it provided initial guidelines for the work of GATT. The Contracting Parties at their 13th session, attended by Ministers, subsequently established three committees in GATT: Committee I to convene a further tariff negotiating conference; Committee II to review the agricultural policies of member Governments; and Committee III to tackle the problems facing developing countries in their trade. The establishment of the European Economic Community (EEC) during the previous year also demanded large-scale tariff negotiations under article XXIV, paragraph 6, of the General Agreement.

"1960 *The Dillon Round.* The fifth Round opened in September and was divided into two phases: the first was concerned with negotiations with EEC member States for the creation of a single schedule of concessions for the Community based on its Common External Tariff; and the second was a further general round of tariff negotiations. Named in honour of United States Under-Secretary of State Douglas Dillon, who proposed the negotiations, the Round was concluded in July 1962 and resulted in about 4,400 tariff concessions covering \$4.9 billion of trade.

"1961 *The Short-term Arrangement* covering cotton textiles was agreed as an exception to the GATT rules. The arrangement permitted the negotiation of quota restrictions affecting the exports of cotton-producing countries. In 1962 the "Short-term" Arrangement became the "Long-term" Arrangement lasting until 1974 when the Multi-fibre Arrangement entered into force.

"1964 *The Kennedy Round.* Meeting at the ministerial level, a Trade Negotiations Committee formally opened the Kennedy Round in May. In June 1967, the Final Act of the Round was signed by some 50 participating countries which together accounted for 75 per cent of world trade. For the first time, negotiations departed from the product-by-product approach used in the previous Rounds to an across-the-board or linear method of cutting tariffs for industrial goods. The working hypothesis of a 50 per cent target cut in tariff levels was achieved in many areas. Concessions covered an estimated total value of trade of about \$40 billion. Separate agreements were reached on grains, chemical products and a Code on Anti-Dumping.

"1965 *A new chapter*. The early 1960s marked the accession to the General Agreement of many newly independent developing countries. In February, the Contracting Parties, meeting in a special session, adopted the text of Part IV on Trade and Development. The additional chapter to GATT required developed countries to accord high priority to the reduction of trade barriers to products of developing countries. A Committee on Trade and Development was established to oversee the functioning of the new GATT provisions. In the preceding year, GATT had established the International Trade Centre to help developing countries in trade promotion and identification of potential markets. Since 1968, the Centre had been jointly operated by GATT and the United Nations Conference on Trade and Development (UNCTAD).

"1973 *The Tokyo Round*. The seventh Round was launched by Ministers in September at the Japanese capital. Some 99 countries participated in negotiating a comprehensive body of agreements covering both tariff and non-tariff matters. At the end of the Round in November 1979, participants exchanged tariff reductions and bindings which covered more than \$300 billion of trade. As a result of those cuts, the weighted average tariff on manufactured goods in the world's nine major industrial markets declined from 7.0 to 4.7 per cent. Agreements were reached in the following areas: subsidies and countervailing measures, technical barriers to trade, import licensing procedures, government procurement, customs valuation, a revised anti-dumping code, trade in bovine meat, trade in dairy products, and trade in civil aircraft. The first concrete result of the Round was the reduction of import duties and other trade barriers by industrial countries on tropical products exported by developing countries.

"1974 On 1 January 1974, the Arrangement regarding International Trade in Textiles, otherwise known as the Multi-fibre Arrangement (MFA), entered into force. It superseded the arrangements that had been governing trade in cotton textiles since 1961. The MFA seeks to promote the expansion and progressive liberalization of trade in textile products while at the same time avoiding disruptive effects in individual markets and lines of production. The MFA was extended in 1978, 1982, 1986, 1991 and 1992. MFA members account for most of the world exports of textiles and clothing, which in 1986 amounted to \$128 billion.

"1982 *Ministerial meeting*. Meeting for the first time in nearly 10 years, the GATT Ministers in November at Geneva reaffirmed the validity of GATT rules for the conduct of international trade and committed themselves to combating protectionist pressures. They also established a wide-ranging work programme for GATT, which was to lay down the groundwork for a new round.

"1986 *The Uruguay Round*. The GATT Trade Minister at Punta del Este, Uruguay, launched the eighth Round of trade negotiations on 20 September. The Punta del Este Declaration, while representing a single political undertaking, was divided into two sections. The first covered negotiations on trade in goods and the second initiated negotiation on trade in services. In the area of trade in goods, the Ministers committed themselves to a 'standstill' on new trade measures inconsistent with their GATT obligations and to a 'rollback' programme aimed at phasing out existing inconsistent measures. Envisaged to last four years, negotiations started in early February 1987 in the following areas: tariffs, non-tariff measures, tropical products, natural resource-based products, textiles and clothing, agriculture, subsidies, safeguards, trade-related aspects of intellectual property rights including trade in counterfeit goods, and trade-related investment measures. The work of other groups included a review of GATT articles, the GATT dispute-settlement procedure, the Tokyo Round agreements, as well as the functioning of the GATT system as a whole.

"1994 *GATT 1994* is the updated version of GATT 1947 and takes into account the substantive and institutional changes negotiated in the Uruguay Round. GATT 1994 is an integral part of the World Trade Organization established on 1 January 1995. It is agreed that there will be a one-year transition period during which certain GATT 1947 bodies and commitments would coexist with those of the World Trade Organization."

<sup>2</sup>The Final Act was signed by representatives of 125 entities, namely Algeria, Angola, Antigua and Barbuda, Argentine Republic, Australia, Republic of Austria, State of Bahrain, People's Republic of Bangladesh, Barbados, Kingdom of Belgium, Belize, Republic of Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, People's Republic of China, Colombia, Congo, Costa Rica, Republic of Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Kingdom of

Denmark, Commonwealth of Dominican Republic, Arab Republic of Egypt, El Salvador, European Communities, Republic of Fiji, Finland, French Republic, Gabonese Republic, Gambia, Federal Republic of Germany, Ghana, Hellenic Republic, Grenada, Guatemala, Republic of Guinea-Bissau, Republic of Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, State of Israel, Italian Republic, Jamaica, Japan, Kenya, [Republic of] Korea, State of Kuwait, Kingdom of Lesotho, Principality of Liechtenstein, Grand Duchy of Luxembourg, Macau, Republic of Madagascar, Republic of Malawi, Malaysia, Republic of Maldives, Republic of Mali, Republic of Malta, Islamic Republic of Mauritania, Republic of Mauritius, United Mexican States, Kingdom of Morocco, Republic of Mozambique, Union of Myanmar, Republic of Namibia, Kingdom of the Netherlands, New Zealand, Nicaragua, Republic of Niger, Federal Republic of Nigeria, Kingdom of Norway, Islamic Republic of Pakistan, Paraguay, Peru, Philippines, Poland, Portuguese Republic, State of Qatar, Romania, Rwandese Republic, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Singapore, Slovak Republic, South Africa, Kingdom of Spain, Democratic Socialist Republic of Sri Lanka, Republic of Suriname, Kingdom of Swaziland, Kingdom of Sweden, Swiss Confederation, United Republic of Tanzania, Kingdom of Thailand, Togolese Republic, Republic of Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Eastern Republic of Uruguay, Venezuela, Republic of Zaire, Republic of Zambia, Republic of Zimbabwe.

3

11 August 1994

The Honourable Members

Senate

Through Senate President Edgardo Angara

Manila

Ladies and Gentlemen:

I have the honour to forward herewith an authenticated copy of the Uruguay Round Final Act signed by Department of Trade and Industry Secretary Rizalino S. Navarro for the Philippines on 15 April 1994 in Marrakesh, Morocco.

The Uruguay Round Final Act aims to liberalize and expand world trade and strengthen the interrelationship between trade and economic policies affecting growth and development.

The Final Act will improve Philippine access to foreign markets, especially its major trading partners, through the reduction of tariffs on its exports, particularly agricultural and industrial products. These concessions may be availed of by the Philippines only if it is a member of the World Trade Organization. By GATT estimates, the Philippines can acquire additional export revenues from \$2.2 to \$2.7 billion annually under Uruguay Round. This will be on top of the normal increase in exports that the Philippines may experience.

The Final Act will also open up new opportunities for the services sector in such areas as the movement of personnel (e.g., professional services and construction services), cross-border supply (e.g., computer-related services), consumption abroad (e.g., tourism, convention services, etc.) and commercial presence.

The clarified and improved rules and disciplines on anti-dumping and countervailing measures will also benefit Philippine exporters by reducing the costs and uncertainty associated with exporting while at the same time providing a means for domestic industries to safeguard themselves against unfair imports.

Likewise, the provision of adequate protection for intellectual property rights is expected to attract more investments into the country and to make it less vulnerable to unilateral actions by its trading partners (e.g., sect. 301 of the United States Omnibus Trade Law).

In view of the foregoing the Uruguay Round Final Act is hereby submitted to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution.

A draft of a proposed resolution giving its concurrence to the aforesaid Agreement is enclosed.

Very truly yours,  
(Signed)  
Fidel V. RAMOS

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11 August 1994

The Honourable Members  
Senate  
Through Senate President Edgardo Angara  
Manila  
Ladies and Gentlemen:

I have the honour to forward herewith an authenticated copy of the Uruguay Round Final Act signed by Department of Trade and Industry Secretary Rizalino S. Navarro for the Philippines on 13 April 1994 in Marrakech [sic], Morocco. Members of the trade negotiations committee, which included the Philippines, agreed the Agreement Establishing the World Trade Organization, the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services embody the results of their negotiations and form an integral part of the Uruguay Round Final Act.

By signing the Uruguay Round Final Act, the Philippines, through Secretary Navarro, agreed:

- (a) To submit the Agreement Establishing the World Trade Organization to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution; and
- (b) To adopt the Ministerial Declarations and Decisions.

The Uruguay Round Final Act aims to liberalize and expand world trade and strengthen the interrelationship between trade and economic policies affecting growth and development.

The Final Act will improve Philippine access to foreign markets, especially its major trading partners, through the reduction of tariffs on its exports, particularly agricultural and industrial products. These concessions may be availed of by the Philippines only if it is a member of the World Trade Organization. By GATT estimates, the Philippines can acquire additional export revenues from \$2.2 to \$2.7 billion annually under Uruguay Round. This will be on top of the normal increase in the exports that the Philippines may experience.

The Final Act will also open up new opportunities for the services sector in such areas as the movement of personnel (e.g., professional services and construction services), cross-border supply (e.g., computer-related services), consumption abroad (e.g., tourism, convention services, etc.) and commercial presence.

The clarified and improved rules and disciplines on anti-dumping and countervailing measures will also benefit Philippine exporters by reducing the costs and uncertainty associated with exporting while at the same time providing a means for domestic industries to safeguard themselves against unfair imports.

Likewise, the provision of adequate protection for intellectual property rights is expected to attract more investments into the country and to make it less vulnerable to unilateral actions by its trading partners (e.g., sect. 301 of the United States Omnibus Trade Law).

In view of the foregoing, the Uruguay Round Final Act, the Agreement Establishing the World Trade Organization, the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services, as embodied in the Uruguay Round Final Act and forming an integral part thereof, are hereby submitted to the Senate for its concurrence pursuant to section 21, article VII, of the Constitution.

A draft of a proposed resolution giving its concurrence to the aforesaid Agreement is enclosed.

Very truly yours,  
(Signed)  
Fidel V. RAMOS

Hon. Edgardo J. Angara  
Senate President  
Senate, Manila

Dear Senate President Angara:

Pursuant to the provisions of section 26 (2), article VI, of the Constitution, I hereby certify to the necessity of the immediate adoption of P.S. 1083, entitled:

“Concurring in the Ratification of the Agreement Establishing the World Trade Organization”

to meet a public emergency consisting of the need for immediate membership in the WTO in order to assure the benefits of the Philippine economy arising from such membership.

Very truly yours,

(Signed)

Fidel V. RAMOS

<sup>6</sup>Attached as annex A, Petition; rollo, p. 52, P.S. 1083, is the forerunner of assailed Senate resolution 97. It was prepared by the Committee of the Whole on the General Agreement on Tariffs and Trade chaired by Sen. Blas F. Ople and co-chaired by Sen. Gloria Macapagal-Arroyo; see annex C, Compliance of petitioners dated 28 January 1997.

<sup>7</sup>The Philippines is thus considered an original or founding member of WTO, which, as of 26 July 1996, had 123 members, as follows: Antigua and Barbuda, Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chile, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, European Community, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, [Republic of] Korea, Kuwait, Lesotho, Liechtenstein, Luxembourg, Macau, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Namibia, Netherlands—for the Kingdom in Europe and for the Netherlands Antilles, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, [United Republic of] Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Zambia and Zimbabwe.

<sup>8</sup>Page 6; rollo, p. 261.

<sup>9</sup>In compliance, Ambassador Bautista submitted to the Court, on 12 August 1996, a memorandum (the “Bautista paper”) consisting of 56 pages excluding annexes. This is the same document mentioned in note 1.

<sup>10</sup>Memorandum for respondents, p. 13; rollo, p. 268.

<sup>11</sup>Cf. *Kilosbayan, Incorporated vs. Morato*, 246 SCRA 540, 17 July 1995, for a discussion on locus standi. See also the Concurring Opinion of Mr. Justice Vicente V. Mendoza in *Tatad vs. Garcia, Jr.*, 243 SCRA 473, 6 April 1995, as well as *Kilusang Mayo Uno Labor Center vs. Garcia, Jr.*, 239 SCRA 386, 414, 23 December 1994.

<sup>12</sup>*Aquino, Jr. vs. Ponce Enrile*, 59 SCRA 183, 196, 17 September 1974, cited in *Bondoc vs. Pineda*, 201 SCRA 792, 795, 26 September 1991.

<sup>13</sup>*Guingona, Jr. vs. Gonzales*, 219 SCRA 326, 337, 1 March 1993.

<sup>14</sup>See *Tañada and Macapagal vs. Cuenco et al.*, 103 Phil. 1051, for a discussion on the scope of “political question”.

<sup>15</sup>Section 1, article VIII (para. 2).

<sup>16</sup>In a privilege speech on 17 May 1993, entitled "Supreme Court—Potential Tyrant?", Senator Arturo Tolentino concedes that this new provision gives the Supreme Court a duty "to intrude into the jurisdiction of the Congress or the President".

<sup>17</sup>I *Record of the Constitutional Commission* 436.

<sup>18</sup>Cf. *Daza vs. Singson*, 180 SCRA 496, 21 December 1989.

<sup>19</sup>Memorandum for Petitioners, pp. 14-16; rollo, pp. 204-206.

<sup>20</sup>Para. 4, art. XVI, WTO Agreement, *Uruguay Round of Multilateral Trade Negotiations*, vol. 1, p. 146.

<sup>21</sup>Also entitled "Declaration of Principles". The nomenclature in the 1973 Charter is identical with that in the 1987 one.

<sup>22</sup>*Philippine Political Law*, 1962 ed., p. 116.

<sup>23</sup>Bernas, *The Constitution of the Philippines: A Commentary*, vol. II, 1988 ed., p. 2. In the very recent case of *Manila Prince Hotel vs. GSIS*, G.R. No. 122156, 3 February 1997, p. 8, it was held that "[a] provision which lays down a general principle, such as those found in article II of the 1987 Constitution, is usually not self-executing".

<sup>24</sup>246 SCRA 540, 564, 17 July 1995. See also *Tolentino vs. Secretary of Finance*, G.R. No. 115455, and consolidated cases, 25 August 1995.

<sup>25</sup>197 SCRA 52, 68, 14 May 1991.

<sup>26</sup>224 SCRA 792, 817, 30 July 1993.

<sup>27</sup>Sect. 10, art. XII.

<sup>28</sup>Sect. 12, art. XII.

<sup>29</sup>Sect. 19, art. II.

<sup>30</sup>Sect. 13, art. XII.

<sup>31</sup>G.R. No. 122156, 3 February 1997, pp. 13-14.

<sup>32</sup>Sect. 1, art. XII.

<sup>33</sup>Bautista paper, p. 19.

<sup>34</sup>Preamble, WTO Agreement, p. 137, vol. 1, *Uruguay Round of Multilateral Trade Negotiations*. Emphasis supplied.

<sup>35</sup>Sect. 19, art. II, Constitution.

<sup>36</sup>III *Records of the Constitutional Commission* 252.

<sup>37</sup>Sect. 13, art. XII, Constitution.

<sup>38</sup>Justice Isagani A. Cruz, *Philippine Political Law*, 1995 ed., p. 13, quoting his own article, entitled "A Quintessential Constitution", earlier published in the *San Beda Law Journal*, April 1972; emphasis supplied.

<sup>39</sup>Para. 4, art. XVI (Miscellaneous provisions), WTO Agreement, p. 146, vol. 1, *Uruguay Round of Multilateral Trade Negotiations*.

<sup>40</sup>Memorandum for the Petitioners, p. 29; rollo, p. 219.

<sup>41</sup>Sect. 24, art. VI, Constitution.

<sup>42</sup>Subsection (2), sect. 28, art. VI, Constitution.

<sup>43</sup>Sect. 2, art. II, Constitution.

<sup>44</sup>Cruz, *Philippine Political Law*, 1995 ed., p. 55.

<sup>45</sup>Salonga and Yap, op. cit., p. 305.

<sup>46</sup>Idem, p. 287.

<sup>47</sup>Quoted in Paras and Paras, Jr., *International Law and World Politics*, 1994 ed., p. 178.

<sup>48</sup>*Reagan vs. Commissioner of Internal Revenue*, 30 SCRA 968, 973, 27 December 1969.

<sup>49</sup>Trebilcock and Howse, *The Regulation of International Trade* (London, 1995), p. 14, cited in Bautista paper, pp. 55-56.

<sup>50</sup>*Uruguay Round of Multilateral Trade Negotiations*, vol. 31, p. 25445.

<sup>51</sup>Item 5, sect. 5, art. VIII, Constitution.

<sup>52</sup>*Uruguay Round of Multilateral Trade Negotiations*, vol. 31, p. 25445.

<sup>53</sup>Bautista paper, p. 13.

<sup>54</sup>See note 3 above.

<sup>55</sup>Salonga and Yap, op. cit., pp. 289-290.

<sup>55</sup>The full text, without the signatures, of the Final Act is as follows:

*"Final Act Embodying the Results of the Uruguay Round  
of Multilateral Trade Negotiations"*

"1. Having met in order to conclude the Uruguay Round of Multilateral Trade Negotiations, representatives of the Governments and of the European Communities, members of the Trade Negotiations committee, agree that the Agreement Establishing the World Trade Organization (referred to in this Final Act as the 'WTO Agreement'), the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services, as annexed hereto, embody the results of their negotiations and form an integral part of this Final Act.

"2. By signing to the present Final Act, the representatives agree:

(a) To submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities with a view to seeking approval of the Agreement in accordance with their procedures; and

(b) To adopt the Ministerial Declarations and Decisions.

"3. The representatives agree on the desirability of acceptance of the WTO Agreement by all participants in the Uruguay Round of Multilateral Trade Negotiations (hereinafter referred to as 'participants') with a view to its entry into force by 1 January 1995, or as early as possible thereafter. Not later than late 1994, Ministers will meet, in accordance with the final paragraph of the Punta del Este Ministerial Declarations, to decide on the international implementation of the results, including the timing of their entry into force.

"4. The representatives agree that the WTO Agreement shall be open for acceptance as a whole, by signature or otherwise, by all participants pursuant to article XIV thereof. The acceptance and entry into force of a Plurilateral Trade Agreement included in annex 4 to the WTO Agreement shall be governed by the provisions of that Plurilateral Trade Agreement.

"5. Before accepting the WTO Agreement, participants which are not contracting parties to the General Agreement on Tariffs and Trade must first have concluded negotiations for their accession to the General Agreement and become contracting parties thereto. For participants which are not contracting parties to the General Agreement as of the date of the Final Act, the Schedules are not definitive and shall be subsequently completed for the purpose of their accession to the General Agreement and acceptance of the WTO Agreement.

"6. This Final Act and the texts annexed hereto shall be deposited with the Director-General to the Contracting Parties to the General Agreement on Tariffs and Trade who shall promptly furnish to each participant a certified copy thereof.

"DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic."

<sup>56</sup>Bautista paper, p. 16.

<sup>57</sup>*Idem*.

<sup>58</sup>*Uruguay Round of Multilateral Trade Negotiations*, vol. I, pp. 137-138.

<sup>59</sup>See note 3 above for complete text.

<sup>60</sup>Taken from Respondent memorandum, pp. 63-85.

<sup>61</sup>*Zarate vs. Olegario*, G.R. No. 90655, 7 October 1996.

<sup>62</sup>*San Sebastian College vs. Court of Appeals*, 197 SCRA 138, 144, 15 May 1991; *Commissioner of Internal Revenue vs. Court of Tax Appeals*, 195 SCRA 444, 458, 20 March 1991; *Simon vs. Civil Service Commission*, 215 SCRA 410, 5 November 1992; *Bustamante vs. Commissioner on Audit*, 216 SCRA 134, 136, 27 November 1992.

<sup>63</sup>*Paredes vs. Civil Service Commission*, 192 SCRA 84, 94, 4 December 1990.

<sup>64</sup>"Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two thirds of all the members of the Senate."

<sup>65</sup>*Reader's Digest*, December 1996 issue, p. 28.



**Part Four**

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- A. INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL LAW IN GENERAL
  - 1. General
  - 2. Particular questions
- B. UNITED NATIONS
  - 1. General
  - 2. Particular organs
  - 3. Particular questions or activities
- C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

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